

APPENDIX

TO THE HISTORY OF THE EIGHTH CONGRESS.

COMPRISING THE MOST IMPORTANT DOCUMENTS ORIGINATING DURING THAT CONGRESS, AND THE PUBLIC ACTS PASSED BY IT.

LOUISIANA.

[Communicated to Congress January 16, 1804.]

To the Senate and House of

Representatives of the United States:

In execution of the act of the present session of Congress for taking possession of Louisiana, as ceded to us by France, and for the temporary government thereof, Governor Claiborne of the Mississippi Territory, and General Wilkinson, were appointed Commissioners to receive possession. They proceeded, with such regular troops as had been assembled at Fort Adams from the nearest posts, and with some militia of the Mississippi Territory, to New Orleans. To be prepared for anything unexpected which might arise out of the transaction, a respectable body of militia was ordered to be in readiness in the States of Ohio, Kentucky, and Tennessee, and a part of those of Tennessee was moved on to the Natchez. No occasion, however, arose for their services. Our Commissioners, on their arrival at New Orleans, found the Province already delivered by the Commissaries of Spain to that of France, who delivered it over to them on the twentieth day of December, as appears by their declaratory act accompanying this. Governor Claiborne, being duly invested with the powers heretofore exercised by the Governor and Intendant of Louisiana, assumed the government on the same day, and, for the maintenance of law and order, immediately issued the proclamation and address now communicated.

On this important acquisition, so favorable to the immediate interests of our Western citizens, so auspicious to the peace and security of the nation in general, which adds to our country territories so extensive and fertile, and to our citizens new brethren to partake of the blessings of freedom and self-government, I offer to Congress and our country my sincere congratulations.

JAN. 16, 1804.

TH. JEFFERSON.

CITY OF NEW ORLEANS, Dec. 20, 1803.

SIR: We have the satisfaction to announce to you, that the Province of Louisiana was this day surrendered to the United States by the Commissioner of France; and to add, that the flag of

our country was raised in this city amidst the acclamations of the inhabitants.

The enclosed is a copy of an instrument of writing, which was signed and exchanged by the Commissioners of the two Governments, and is designed as a record of this interesting transaction.

Accept assurances of our respectful consideration.

WM. C. C. CLAIBORNE,
JAMES WILKINSON.

JAMES MADISON, *Secretary of State.*

The undersigned, William C. C. Claiborne, and James Wilkinson, commissioners or agents of the United States, agreeably to the full powers they have received from Thomas Jefferson, President of the United States, under date of the 31st October 1803, and twenty-eighth year of the independence of the United States of America, (8th Brumaire, 12th year of the French Republic,) countersigned by the Secretary of State, James Madison, and citizen Peter Clement Laussat, Colonial Prefect, and Commissioner of the French Government, for the delivery, in the name of the French Republic, of the country, territories, and dependencies of Louisiana, to the commissioners or agents of the United States, conformably to the powers, commission, and special mandate which he has received, in the name of the French people, from citizen Bonaparte, First Consul, under date of the 6th June, 1803, (17th Prairial, eleventh year of the French Republic,) countersigned by the Secretary of State, Hugues Maret, and by his Excellency the Minister of Marine and Colonies, Decrees, do certify by these presents, that on this day, Tuesday, the 20th December, 1803, of the Christian era, (28th Frimaire, twelfth year of the French Republic,) being convened in the hall of the Hotel de Ville of New Orleans, accompanied on both sides by the Chiefs and Officers of the Army and Navy, by the municipality and divers respectable citizens of their respective Republics, the said William C. C. Claiborne and James Wilkinson, delivered to the said citizen Laussat their aforesaid full powers, by which it evidently appears that full power and authority has been given them jointly and severally to take possession of, and to occupy the territories ceded by France to the United States, by the treaty concluded at Paris on the 30th day of April last past,

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(10th Floreal,) and for that purpose to repair to the said Territory, and there to execute and perform all such acts and things, touching the premises, as may be necessary for fulfilling their appointment conformably to the said treaty and the laws of the United States; and thereupon the said citizen Laussat declared that, in virtue of, and in the terms of the powers, commission, and special mandate dated at St. Cloud, 6th June, 1803, of the Christian era, (17th Prairial, 11th year of the French Republic,) he put from that moment the said Commissioners of the United in possession of the country, territories, and dependencies of Louisiana, conformably to the first, second, fourth, and fifth articles of the treaty and two conventions, concluded and signed the 30th April, 1803, (10th Floreal, 11th year of the French Republic,) between the French Republic and the United States of America, by citizen Barbé Marbois, Minister of the Public Treasury, and Messrs. Robert R. Livingston and James Monroe, Ministers Plenipotentiary of the United States, all three furnished with full powers, of which treaty and two conventions the ratifications, made by the First Consul of the French Republic on the one part, and by the President of the United States, by and with the advice and consent of the Senate, on the other part, have been exchanged and mutually received at the City of Washington, the 21st October, 1803, (28th Vendémiaire, 12th year of the French Republic,) by citizen Louis André Pichon, Chargé des Affaires of the French Republic near the United States, on the part of France, and by James Madison, Secretary of State of the United States, on the part of the United States, according to the *procès verbal* drawn up on the same day; and the present delivery of the country is made to them, to the end that, in conformity with the object of the said treaty, the sovereignty and property of the colony or province of Louisiana may pass to the said United States, under the same clauses and conditions as it had been ceded by Spain to France, in virtue of the treaty concluded at St. Ildefonso, on the 1st October, 1800, (9th Vendémiaire, 9th year,) between these two last Powers, which has since received its execution by the actual re-entrance of the French Republic into possession of the said colony or province.

And the said citizen Laussat in consequence, at this present time, delivered to the said Commissioners of the United States, in this public sitting, the keys of the city of New Orleans, declaring that he discharges from their oaths of fidelity towards the French Republic, the citizens and inhabitants of Louisiana, who shall choose to remain under the dominion of the United States.

And that it may forever appear, the undersigned have signed the *procès verbal* of this important and solemn act, in the French and English languages, and have sealed it with their seals, and have caused it to be countersigned by the secretaries of commission, the day, month, and year above written.

WM. C. C. CLAIBORNE, [L. S.]
JAMES WILKINSON, [L. S.]
LAUSSAT. [L. S.]

Proclamation by His Excellency, William C. C. Claiborne, Governor of the Mississippi Territory, exercising the powers of Governor General and Intendant of the Province of Louisiana.

Whereas, by stipulations between the Governments of France and Spain, the latter ceded to the former the colony and province of Louisiana, with the same extent which it had at the date of the above-mentioned treaty in the hands of Spain, and that it had when France possessed it, and such as it ought to be after the treaties subsequently entered into between Spain and other States; and whereas the Government of France has ceded the same to the United States by a treaty duly ratified, and bearing date the 30th of April in the present year, and the possession of said colony and province is now in the United States, according to the tenor of the last mentioned treaty; and whereas the Congress of the United States on the 31st day of October, in the present year, did enact that, until the expiration of the session of Congress then sitting, (unless provisions for the temporary government of the said territories be made by Congress,) all the military, civil, and judicial powers, exercised by the then existing government of the same, shall be vested in such person or persons, and shall be exercised in such manner as the President of the United States shall direct, for the maintaining and protecting the inhabitants of Louisiana in the free enjoyment of their liberty, property, and religion; and the President of the United States has, by his commission, bearing date the same 31st day of October, invested me with all the powers, and charged me with the several duties heretofore held and exercised by the Governor General and Intendant of the Province.

I have, therefore thought fit to issue this, my proclamation, making known the premises, and to declare, that the government heretofore exercised over the said Province of Louisiana, as well under the authority of Spain as of the French Republic has ceased, and that of the United States of America is established over the same; that the inhabitants thereof will be incorporated in the Union of the United States, and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States; that, in the meantime, they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess; that all laws and municipal regulations which were in existence at the cessation of the late government, remain in full force; and all civil officers charged with their execution, except those whose powers have been especially vested in me, and except, also, such officers as have been intrusted with the collection of the revenue, are continued in their functions, during the pleasure of the Governor for the time being, or until provision shall otherwise be made.

And I do hereby exhort and enjoin all the inhabitants, and other persons within the said province, to be faithful and true in their allegiance to the United States, and obedient to the laws and

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authorities of the same, under full assurance that their just rights will be under the guardianship of the United States, and will be maintained from all force or violence from without or within.

In testimony whereof I have hereunto set my hand.

Given at the city of New Orleans, the 20th day of December, 1803, and of the independence of the United States of America, the twenty-eighth.

WM. C. C. CLAIBORNE.

The Governor's Address to the citizens of Louisiana.

NEW ORLEANS, Sept. 20, 1803.

FELLOW-CITIZENS OF LOUISIANA: On the great and interesting event now finally consummated—an event so advantageous to yourselves, and so glorious to United America—I cannot forbear offering you my warmest congratulations. The wise policy of the Consul of France has, by the cession of Louisiana to the United States, secured to you a connexion beyond the reach of change, and to your posterity the sure inheritance of freedom. The American people receive you as brothers, and will hasten to extend to you a participation in those inestimable rights which have formed the basis of their own unexampled prosperity. Under the auspices of the American Government, you may confidently rely upon the security of your liberty, your property, and the religion of your choice. You may with equal certainty rest assured that your commerce will be promoted and your agriculture cherished—in a word, that your true interests will be among the primary objects of our National Legislature. In return for these benefits, the United States will be amply remunerated if your growing attachment to the Constitution of our country, and your veneration for the principles on which it is founded, be duly proportioned to the blessings which they will confer. Among your first duties, therefore, you should cultivate with assiduity among yourselves the advancement of political information. You should guide the rising generation in the paths of republican economy and virtue. You should encourage literature; for without the advantages of education, your descendants will be unable to appreciate the intrinsic worth of the Government transmitted to them.

As for myself, fellow-citizens, accept a sincere assurance, that during my continuance in the situation in which the President of the United States has been pleased to place me, every exertion will be made on my part to foster your internal happiness, and forward your general welfare; for it is only by such means that I can secure to myself the approbation of those great and just men who preside in the councils of our nation.

WM. C. C. CLAIBORNE.

[The following papers, relating to the opposition of Spain to the cession of Louisiana to the United States, were transmitted to Congress with the President's Message of November 8, 1804.]

Extract of a letter from Don Pedro Cevallos, Minister of State of his Catholic Majesty, to Mr. Charles Pinckney, dated at the Pardo, February 10, 1804.

"At the same time the Minister of His Majesty in the United States is charged to inform the American Government respecting the falsity of the rumor referred to, he has likewise orders to declare to it that His Majesty has thought fit to renounce his opposition to the alienation of Louisiana made by France, notwithstanding the solid reasons on which it is founded; thereby giving a new proof of his benevolence and friendship towards the United States."

Copy of a letter from the Marquis of Casa Yrujo to the Secretary of State.

PHILADELPHIA, May 15, 1804.

SIR: The explanations which the Government of France has given to His Catholic Majesty concerning the sale of Louisiana to the United States, and the amicable dispositions on the part of the King my master towards these States, have determined him to abandon the opposition which, at a prior period, and with the most substantial motives, he had manifested against that transaction. In consequence, and by special order of His Majesty, I have the pleasure to communicate to you his royal intentions on an affair so important; well persuaded that the American Government will see, in this conduct of the King my master, a new proof of his consideration for the United States, and they will correspond, with a true reciprocity, with the sincere friendship of the King, of which he has given so many proofs.

God preserve you many years.

M. CASA YRUJO.

JAMES MADISON, Esq.

To all whom these presents shall come: Whereas, by an act of Congress, authority has been given to the President of the United States, whenever he shall deem it expedient, to erect the shores, waters, and inlets of the bay and river of Mobile, and of the other rivers, creeks, inlets, and bays, emptying into the Gulf of Mexico, east of the said river Mobile, and west thereof to the Pascagoula, inclusive, into a separate district for the collection of duties on imports and tonnage, and to establish such place within the same as he shall deem it expedient to be the port of entry and delivery for such district; and to designate such other places within the same district, not exceeding two, to be ports of delivery only:

Now know ye, That I, Thomas Jefferson, President of the United States, do hereby decide, that all the above mentioned shores, waters, inlets, creeks, and rivers, lying *within the boundaries of the United States*, shall constitute and form a separate district, to be denominated "the district of Mobile;" and do also designate Fort Stoddert, within the district aforesaid, to be the port of entry and delivery for the said district.

Given under my hand, this 20th day of May, 1804.

TH. JEFFERSON.

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GREAT BRITAIN.

Communicated to the Senate, October 24, 1803.

To the Senate of the United States:

I lay before you the convention* signed on the 12th day of May last, between the United States and Great Britain, for settling the boundaries in the northeastern and northwestern parts of the United States, which was mentioned in my general Message of the 17th instant, together with such papers relating thereto as may enable you to determine whether you will advise and consent to its ratification.

TH. JEFFERSON.

OCTOBER 24, 1803.

Convention with His Britannic Majesty.

In order that the boundaries between the territories of His Britannic Majesty and those of the United States of America may be more precisely ascertained and determined than has hitherto been done, the parties have respectively named their Plenipotentiaries, and given them full powers to negotiate and conclude a convention for this purpose; that is to say, His Britannic Majesty has named for his Plenipotentiary the Right Honorable Robert Banks Jenkinson, commonly called Lord Hawkesbury, one of His Majesty's most honorable Privy Council, and his principal Secretary of State for Foreign Affairs; and the President of the United States, by and with the consent of the Senate thereof, has appointed for their Plenipotentiary, Mr. Rufus King, their Minister Plenipotentiary to his said Majesty; who have agreed upon and concluded the following articles:

ARTICLE 1. The line hereinafter described shall and hereby is, declared to be the boundary between the mouth of the river St. Croix and the Bay of Fundy; that is to say, a line beginning in the middle of the channel of the river St. Croix, at its mouth, as the same has been ascertained by the Commissioners appointed for that purpose; thence through the middle of the channel between Deer island on the east and north, and Moose island, and Campo Bello island on the west and south, and round the eastern point of Campo Bello island to the Bay of Fundy; and the islands and waters northward and eastward of the said boundary, together with the island of Campo Bello, situated to the southward thereof, are hereby declared to be within the jurisdiction and part of his Britannic Majesty's Province of New Brunswick; and the islands and waters southward and westward of the said boundary, except only the island of Campo Bello, are hereby declared to be within the jurisdiction and part of Massachusetts, one of the said United States.

ART. 2. Whereas, it has become expedient that the northwest angle of Nova Scotia, mentioned and described in the Treaty of Peace between His Majesty and the United States, should be as-

certained and determined; and that the line between the source of the river St. Croix, and the said northwest angle of Nova Scotia, should be run and marked, according to the provisions of the said Treaty of Peace: It is agreed that for this purpose, Commissioners shall be appointed in the following manner, viz.; one Commissioner shall be named by His Majesty and one by the President of the United States, by and with the advice and consent of the Senate thereof; and the said two Commissioners shall agree in the choice of a third; or, if they cannot agree, they shall each propose one person; and of the two names, so proposed, one shall be taken by lot in presence of the two original Commissioners; and the three Commissioners, so appointed, shall be sworn impartially to ascertain and determine the said northwest angle of Nova Scotia, pursuant to the provisions of the said Treaty of Peace: and likewise to cause the said boundary line between the source of the river St. Croix, as the same has been determined by the Commissioners appointed for that purpose, and the northwest angle of Nova Scotia, to be run and marked according to the provisions of the Treaty aforesaid. The said Commissioners shall meet at Boston, and have power to adjourn to such place or places as they shall think fit; they shall have power to appoint a secretary and employ such surveyors, and other assistants, as they shall judge necessary: the said Commissioners shall draw up a report of their proceedings which shall describe the line aforesaid, and particularize the latitude and longitude of the place ascertained and determined, as aforesaid, to be the northwest angle of Nova Scotia; duplicates of which report, under the hands and seals of the said Commissioners, or of a majority of them, together with duplicates of their accounts, shall be delivered to such persons as may be severally authorized to receive the same in behalf of their respective Governments; and the decision and proceedings of the said Commissioners, or a majority of them, made and had as aforesaid, shall be final and conclusive.

ART. 3. It is further agreed that the said Commissioners, after they shall have executed the duties assigned them in the preceding article, shall be, and they hereby are, authorized, upon their oaths, impartially to ascertain and determine the northwesternmost head of Connecticut river, according to the provisions of the aforesaid Treaty of Peace; and likewise to cause the boundary line described in the said Treaty of Peace, between the northwest angle of Nova Scotia and the said northwesternmost head of Connecticut river, to be run and marked pursuant to the provisions of the said Treaty. The said Commissioners shall meet at Boston, and have power to adjourn to such other place or places as they shall think fit. They shall have power to appoint a secretary, and employ such surveyors and other assistants as they shall judge necessary. The said Commissioners shall draw up a report of their proceedings, which shall describe the boundary line aforesaid, and particularize the latitude and longitude of the westernmost head of Connecticut

* The Senate having assented to this convention on the condition that the fifth article should be expunged, the ratifications of the respective Governments were never exchanged.

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river, duplicates of which report, under the hands and seals of the said Commissioners, or of a majority of them, together with duplicates of their accounts, shall be delivered to such persons as may be severally authorized to receive the same, in behalf of their respective Governments; and the decision and proceedings of the said Commissioners, or of a majority of them, made and had as aforesaid, shall be final and conclusive.

ART. 4. It is further agreed that the aforesaid Commissioners shall be respectively paid in such manner as shall be agreed between the two parties, such agreement to be settled at the time of the exchange of the ratifications of this Convention, and all other expenses incurred by the said Commissioners shall be defrayed jointly by the two parties, the same being previously ascertained and allowed by the said Commissioners; and, in case of death, sickness, or necessary absence, the place of any Commissioner shall be supplied in the same manner as such Commissioner was appointed, and the new Commissioner shall take the same oath, and do the same duties.

ART. 5. Whereas it is uncertain whether the river Mississippi extends so far to the northward as to be intersected by a line drawn due west from the Lake of the Woods, in the manner mentioned in the Treaty of Peace between His Majesty and the United States, it is agreed that, instead of the said line, the boundary of the United States in this quarter shall, and is hereby declared to be the shortest line which can be drawn between the northwest point of the Lake of the Woods and the nearest source of the river Mississippi: and for the purpose of ascertaining and determining the northwest point of the Lake of the Woods and the source of the river Mississippi that may be nearest to said northwest point, as well as for the purpose of running and marking the said boundary line between the same, three Commissioners, upon the demand of either Government, shall be appointed, and authorized, upon their oaths, to act; and their compensation and expenses shall be ascertained and paid, and vacancies supplied, in the manner provided in respect to the Commissioners mentioned in the preceding articles; and the decisions and proceedings of the said Commissioners, or of a majority of them, made and had pursuant to this convention, shall be final and conclusive.

In faith whereof, we the undersigned, Ministers Plenipotentiary of His Britannic Majesty and of the United States of America, have signed this present convention, and caused to be affixed thereto the seals of our arms.

Done at London, this 12th day of May, 1803.

HAWKESBURY, [L. S.]
RUFUS KING. [L. S.]

The Secretary of State to Rufus King, Minister, &c.,
of the United States to Great Britain.

DEPARTMENT OF STATE,
Washington, July 28, 1801.

SIR: By the Treaty of Peace, the mouth of the St. Croix is supposed to be in the bay of Fundy.

dy. But as the Commissioners have, in their decision, settled the mouth of that river, called the Schoodiac, to be in Passamaquoddy Bay, at a place called Joe's Point, it is left undetermined to which nation the islands in the last mentioned bay, and the passages through them, into the bay of Fundy, belong. It appears to have been the intention of the two nations, in adjusting their limits at the peace, to make navigable waters, where they were the boundary, common to both, by a divisional line running through the middle of their channels. Hence, it is believed, that, if it be true that one of the passages from the mouth of the river, intended as the St. Croix, into Fundy bay, be seldom and imperfectly navigable, and the other constantly and completely so, it will be most conformable to the Treaty of Peace to establish it as the boundary. Supposing, on the other hand, that the Treaty of Peace should be literally executed, as far as practicable, and the line drawn from Joe's Point, due eastwardly, Great Britain would be excluded from both passages. At present, it is believed that the following description of the passage to be settled as the boundary, would be satisfactory to both nations: "Beginning in the middle of the channel of the river St. Croix, at its mouth; thence, direct, to the middle of the channel, between Pleasant Point and Deer island; thence to the middle of the Channel, between Deer island on the east and north, and Moose island and Campo Bello island on the west and south, and round the eastern point of Campo Bello island, to the bay of Fundy. The other (western) channel has a bar across it, which is dry at low water.

These ideas are thrown out only for consideration. I shall probably have it in my power shortly to transmit you a commission to settle this point, with definitive instructions. Meanwhile, you may break the business to the British Ministry, but without implicating any fixed mode of settlement.

RUFUS KING, &c.

The Secretary of State to Mr. King.

DEPARTMENT OF STATE, June 8, 1802.

SIR: You will herewith receive a commission, giving you powers to adjust, by proper stipulations, with the British Government, whatever remains to be decided in relation to the boundary between the two nations.

In executing the first part of this trust, relating to the bay of Passamaquoddy, you will recur to the observations contained in my letter of the 28th of July last. I refer you also to a copy, herewith enclosed, of a letter from Judge Sullivan, heretofore agent of the United States, on the controversy regarding the river St. Croix, in answer to some inquiries from me on the subject now committed to you. His information and his reasoning will be useful in the discussion; and, to illustrate both, I also enclose herewith a copy of the map to which he refers in the beginning of his letter.

The essential objects to be secured to the United States are, the jurisdiction of Moose island, and

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the common navigation of the bay, and the channels leading to the sea between Deer island and the island of Campo Bello. To the observations of Judge Sullivan, in support of the rights of the United States, it need only be added, that the outlet through Moose island being the only adequate communication with the sea from a great and valuable territory of the United States, they are entitled to the full use of it on that principle, as well as on others, and with the less pretext for objection, as the trifling island of Campo Bello is the only territory held by Great Britain on one side of the channel.

In pursuance of the next object, viz: the establishment of boundaries between the United States and New Brunswick, on one side, and of Canada on another, it will be proper to provide for the immediate extension of the line which is to run from the south of the St. Croix, and which is represented as necessary to guard against interfering or encroaching grants under American and British authorities. As the course of this line is to be due north, and is to proceed from the point fixed by a survey already made, the running of it will be sufficiently provided for by an appointment of a Commissioner by each of the two Governments, and an appointment, by the two Commissioners, of a surveyor. In fixing the point at which the line is to terminate, and which is referred to as the northwest angle of Nova Scotia, the difficulty arises from a reference of the Treaty of 1783 "to the highlands," which it is now found have no definitive existence. To remove this difficulty, no better expedient occurs than to provide for the appointment of a third Commissioner, as in article five, of the Treaty of 1794; and to authorize the three to determine on a point most proper to be substituted for the description in the second article of the Treaty of 1783, having due regard to the general idea that the line ought to terminate on the elevated ground dividing the rivers falling into the Atlantic, from those emptying themselves into the St. Lawrence. The Commissioners may also be authorized to substitute for the description of the boundary between the point so fixed, and the northwesternmost head of Connecticut river, namely, a line drawn along the said highlands, such a reference to intermediate sources of rivers, or other ascertained or ascertainable points, to be connected by straight lines, as will admit of easy and accurate execution hereafter, and as will best comport with the apparent intention of the Treaty of 1783.

The remaining provision necessary to complete the boundary of the United States will be a stipulation amending the second article of the Treaty of 1783, in its description of the line which is to connect the most northwestern point of the Lake of the Woods with the Mississippi. The description supposes that a line running due west from that point, would intersect the Mississippi. It is now well understood that the highest source of the Mississippi is south of the Lake of the Woods; and, consequently, that a line, due west, from its most northwestern point, would not touch any part of that river. To remedy this error, it

may be agreed that the boundary of the United States, in that quarter, shall be a line running from that source of the Mississippi which is nearest to the Lake of the Woods, and striking it, westwardly, as a tangent, and, from the point touched, along the water-mark of the lake, to its most northwestern point, at which it will meet the line running through the lake. The map in McKenzie's late publication is probably the best to which I can refer you on this subject.

From the mutual and manifest advantage to Great Britain and the United States, of an adjustment of all uncertainties concerning boundary, it is hoped you will find a ready concurrence in all the propositions which you will have to make to them. Should difficulties or delays threaten those which relate to the boundary connecting the Mississippi and the Lake of the Woods, or that connecting the Connecticut river and the point to be established as the northeast corner of the United States, it will be proper to separate from these the other subjects of negotiation, and to hasten the latter to a conclusion.

With the highest respect and consideration,
&c. JAMES MADISON.

RUFUS KING, Esq.

BOSTON, May 20, 1802.

SIR: Having the honor of receiving your letter of the 10th inst., I hasten to communicate to you my ideas of the subject-matter of its contents.

When I was under a commission, as agent of the United States, on the controversy with Great Britain regarding the river St. Croix, I forwarded to the office of the Secretary of State a map of the bay of Passamaquoddy, of the Schoodiac, and of the lines of the whole dispute. That map was accurately and elegantly composed from astronomical observations and actual surveys. As that map is under your eye, there is no need of my sending a fac-simile; but I refer you to that for an explanation of this letter.

The Treaty of 1783 with Great Britain evidently contemplates a river, as the St. Croix, which has its mouth in the bay of Fundy. Both rivers claimed by the parties empty their waters in the bay of Passamaquoddy. The agent of the United States urged the Commissioners to settle the boundary through that bay to the sea; because the treaty expressly recognised the mouth of the river as in the bay of Fundy, which is a limb of the ocean, and the other bay united with it might be considered as the river's mouth; but they declined it, on an idea that their commission extended no further than to an authority to find the mouth and source of the river, and that, let whichever would be the river, it had its mouth three leagues from the sea, in Passamaquoddy bay; they, therefore, limited their decision on its southerly line, to a point between St. Andrews and the shore of the United States.

The whole of the waters of Passamaquoddy, eastward and northward of Moose island, and of the island of Campo Bello, are navigable for vessels of any burden. The channel between Moose

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and Deer island is the best. The channel between Moose island and the continent of the United States is shoal, narrow, and not navigable for vessels of consequence. That between Campo Bello and the main, called the west passage, is rendered hazardous and dangerous by a bar of rocks, and is so narrow and shoal, that no vessel of considerable size will be risked there excepting on a fair wind, and at the top of high water. The tides there are exceedingly rapid, and rise near about fifty feet. Therefore, any settlement which would deprive the United States of a free navigation as far to the eastward and northward as the channel you propose; that is, to the one between Moose and Deer islands, and north of Campo Bello, would ultimately destroy the important commerce and valuable navigation of an extensive territory within the United States; for, as you may observe on the maps, there is no river of consequence between the Schoodiac and the Penobscot; and that the waters which issue from numerous and extensive lakes, in the interior parts of the country, running into the sea, as the Schoodiac, will give an advantageous and invaluable transportation to the articles of commerce.

Your construction of the Treaty of 1783, which renders the waters dividing the nations common to both, (where they are navigable,) must be reasonable and just. The English people have, in many instances, practised upon the treaty under such a construction. There has been no interruption to the American navigation, in any part of Passamaquoddy bay; but our vessels have proceeded through that bay to the shore of the United States, at and near Moose island, and have gone into the Schoodiac, above St. Andrew's point, and anchored on the western side of the channel, where they have discharged their cargoes. There have been some seizures where goods have been carried from those vessels over to the English side, but the goods have been condemned, and the vessel discharged. These seizures being made within the jurisdiction of the United States, as to the vessels, were clearly infractions of the law of nations.

There was a seizure lately made of a vessel of one Goddard of Boston. She was taken from her anchor on the American side of the channel, in the river established by the Commissioners as the St. Croix, and carried over to New Brunswick: but she was acquitted by the Court of Admiralty, with damages and costs. Campbell, who made the seizure, appealed to England, merely to avoid the costs and damages, where the cause is now depending under the attention of Robert Slade, a proctor, who is the advocate for Mr. Goddard.

There is a clause in the treaty, that the United States shall comprehend the islands within twenty leagues of any of the shores of the United States, and lying between lines drawn due east from the aforesaid boundaries, between Nova Scotia on the one part, and East Florida on the other, as they shall respectively touch the bay of Fundy, and the Atlantic ocean. This circumstance, that the mouth of the St. Croix is settled to be between St. Andrew's point on the east, and the American

shore on the west, three leagues within the island of Campo Bello, draws this consequence to the treaty, that nearly all the islands in Passamaquoddy bay are within the United States, by the above provision in the treaty, unless they are taken out by an exception, which I shall presently notice. A line, due east (as you will see on the plan) from the Schoodiac mouth at St. Andrew's point, takes in nearly all the bay. A line south, sixty-seven degrees east, will go to the north of Campo Bello, and take two-thirds of Deer island on the west. A southeast line, from the middle of the Schoodiac mouth, passes on the channel between Moose and Deer islands, and through the centre of Campo Bello.

The consequences attached to this provision may be, in some measure, controlled by an exception annexed to it in these words, "excepting such islands as now are, or heretofore have been, within the limits of the Province of Nova Scotia."

The island of Campo Bello is confessedly within the exception, and, therefore, it may be said that the principle of common privilege to navigable waters will not give our nation a right to a navigation northward of, and between, that and the other islands in the bay, because that they, being all within the same exception, the right of a common navigation in both nations may not extend to the waters between that and them. But the answer to this is, that the clause establishes the jurisdiction of the United States, by lines which clearly include all the islands in the bay of Passamaquoddy, and all within the bay of Fundy comprehended to the south of the east line drawn from St. Croix; while the exception can extend only to the islands formerly within the jurisdiction of Nova Scotia, inclusive of the privileges necessary to the occupancy of them. The principle, therefore, of the common right to navigation or navigable waters which divide two nations, cannot apply here; because, in that case, the line of national jurisdiction seems to be settled on the channel; but here, in this case, the jurisdiction is definite, express, and ceded, according to the lines agreed on, as above described.

The ancient charter of Nova Scotia to Sir William Alexander, in 1638, included all the country from the Kennebeck to the bay of Chaleur. The treaty cannot mean, by the expression "heretofore within Nova Scotia," all the islands in that charter. If it mean the islands which were within a more recent description of it, where the boundary westward was the St. Croix, excluding the territory of Acadia, which was placed under the jurisdiction of Massachusetts, by the charter of that Province in 1692, and bounded on that river, the river Schoodiac being now the established St. Croix, there can be no question in regard to Massachusetts extending to the channel where it joins that river. But Moose island, which I have described before, lies two leagues below what the Commissioners made the mouth of the St. Croix, and very near the American shore. This was never granted by the Crown of England, or by the Government of Nova Scotia,

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before the Treaty of Peace; nor was there ever an occupancy of it by subjects acknowledging the authority of Nova Scotia; nor did that Province ever attempt to exercise authority there. Long before the Revolutionary war, it was in the occupancy of the people of, and from the late Province of Massachusetts Bay. The soil has, I believe, been granted by that Province, or by the State since the Revolution, to the people who had it in possession. I do not know the date of the grant. There have been, as I am informed, recent grants by the Province of New Brunswick of that island; but no formal claim on the part of the English nation has been made to it. The grantees of that Province, who have speculated on the pretended right of the English nation, have excited civil officers, under the authority of the Province of New Brunswick, to attempt to execute precepts there. These attempts were repelled, and I have not heard that they have been recently renewed. Should the jurisdiction of that island be found within the English authority, there can be no doubt how the right of property would be settled. This renders the dispute of consequence to the Commonwealth of Massachusetts in a pecuniary point of view.

If the argument above stated does not prove that the jurisdiction of the United States is extended to all the waters of Passamaquoddy bay, but that the treaty leaves the navigable waters of the same, which form the natural boundaries common to both, it is of great consequence, that any claim made under the Crown of the English Empire to Moose island should be subverted. But if their having the island under the reservatory exception does not deprive the United States of the jurisdiction on all the waters southward of the east line, drawn from the mouth of the Schoodiac, the consideration of the property alone gives consequence to the question.

The channel where the waters more directly issue from the Schoodiac to the bay of Fundy, between Moose and Deer islands, and between Deer island and Campo Bello, as described in your letter of instructions to the Minister, is quite adequate to all navigation of our country.

You mention a resolve of the Legislature, wherein the subject of the navigation in Passamaquoddy bay is mentioned. I have attended to a resolve of the tenth of March, which proposes that the Governor should request the President of the United States to take measures for settling the disputed jurisdiction to certain islands in Passamaquoddy bay; but I do not know of any dispute in that bay as to islands, excepting what I have stated as to Moose island.

The settlement and plain establishment of a line from the head or source of the Cheputnatecook, which is the source of the St. Croix, and empties its waters through a long chain of lakes into the Schoodiac, has become necessary, because that Massachusetts is making grants of the lands in that quarter, and the province of New Brunswick is in the same practice, controversies may be created by interfering locations in pursuance of, or under pretence of, those grants. Such con-

troversies can have no guide to their adjustment, excepting lines drawn through a vast extent of wilderness, where many known and unknown causes will affect the magnetic variations. These disputes on national, or even colonial, or State jurisdiction, are not easily settled when they are connected with private claims.

By the Treaty of Peace, it is provided that the boundaries shall be "from the northwest angle of Nova Scotia, viz., that angle which is formed by a line drawn due north, from the source of the St. Croix, to the highlands; along the highlands which divide those rivers that empty themselves into the river St. Lawrence, from those which fall into the Atlantic ocean, to the northwestern-most head of Connecticut river."

You will see by the maps of that part of the country, that the line which runs north from the source of the St. Croix, crosses the river St. John a great way south of any place which could be supposed to be the highlands; but where that line will come to the northwest angle of Nova Scotia, and find its termination, is not easy to discover.

The boundary between Nova Scotia and Canada was described, by the King's proclamation, in the same mode of expression as that used in the Treaty of Peace. Commissioners who were appointed to settle that line, have traversed the country in vain to find the highlands designated as a boundary. I have seen one of them, who agrees with the account which I have had from the natives and others, that there are no mountains or highlands on the southerly side of the St. Lawrence, and northeastward of the river Chaudiere. That, from the mouth of the St. Lawrence to that river, there is a vast extent of high flat country, thousands of feet above the level of the sea, in perpendicular height; being a morass of millions of acres, from whence issue numerous streams and rivers, and from which a great number of lakes are filled by drains. That the rivers originating in this elevated swamp pass each other wide asunder, many miles in opposite courses, some to the St. Lawrence, and some to the Atlantic sea.

Should this description be founded in fact, nothing can be effectively done, as to a Canada line, without a commission to ascertain and settle the place of the northwest angle of Nova Scotia, wherever that may be agreed to be; if there is no mountain or natural monument, an artificial one may be raised. From thence, the line westward to Connecticut river may be established by artificial monuments erected at certain distances from each other; the points of compass from the one to the other may be taken; and the ascertaining the degree of latitude, which each one is placed on from actual observation, may be very useful. Though there is no such chain of mountains as the plans or maps of the country represent under the appellation of the highlands, yet there are eminences from whence an horizon may be made to fix the latitude from common quadrant observations.

In the description of the morass, which is said to crown the heights between the United States

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and Lower Canada, it ought to have been noticed, that, those swamps are vastly extensive, yet, in the acclivity from the Atlantic to their highest elevation, as well as in their declivity to the St. Lawrence, great tracts of valuable country are interspersed. On the banks of the river Chaudiere, and perhaps on the banks of other rivers, running to the St. Lawrence, the settlements are approaching fast towards those of the United States. This circumstance will soon render an established line of national jurisdiction absolutely necessary.

Should there be anything within my power which will give aid to the Government on this occasion, you will please to command me.

I am, sir, with sentiments of sincere respect,
your most humble servant,

JAS. SULLIVAN.

HON. JAMES MADISON.

Mr. Gore to the Secretary of State.

LONDON, October 6, 1802.

SIR: I have the honor to acknowledge the receipt of your several letters to Mr. King, under the following dates, viz: 8th June, 20th, 23d, and 26th of July, and 23d of August; the latter by Mr. Brent: all of which came to hand since his absence from this place. That of June 8th, covering commission and instructions to this gentleman to adjust whatever remains to be decided in relation to the boundaries between the United States and the British Government, was received, and forwarded to him before he left Harwich.

According to his desire, and with a view to expedite the business, I requested an interview of Lord Hawkesbury, for the purpose of making to him such communications on this subject as might enable him to enter on the negotiation with effect, on the return of Mr. King. After having opened the business at our first meeting, he requested it might lay over until Mr. Hammond, the under Secretary of State, should come from the seaside, where he then was for his health, to afford him an opportunity of conferring with this gentleman, who was much acquainted with the business to which the communication referred. On Mr. Hammond's arrival, I saw Lord Hawkesbury, and, with the map of the St. Croix, as reported by the Commissioners under the fifth article of the Treaty of 1794, and Arrowsmith's map of the United States, endeavored to trace out the boundaries that were still requisite to explain to him the views of the President, and to impress on his mind the reasonableness and justice thereof, in regard to the British nation. He appeared disposed to accede to the propositions, so far as they relate to the boundary line through the Passamaquoddy, the mode suggested of adjusting that between the United States and New Brunswick, and fixing the point intended in the Treaty of 1783, by the northwest angle of Nova Scotia, and establishing the boundary between such point and the northwesternmost head of Connecticut river. It is, however, to be understood, that the disposition manifested by his lordship was founded on

the belief that, on inquiry, he should find the islands in Passamaquoddy bay to have been possessed by, and to belong to, the respective nations as the proposed line would place them; and that, on further reflection, no insurmountable objection should occur to the plan proposed for running the other lines and fixing the point referred to. On these subjects, he doubtless intends to consult with Colonel Barclay, the British Commissioner for ascertaining the St. Croix, who is now in some part of Great Britain, and who is expected in London early in the Winter. On that part of the boundary which is to connect the northwest point of the Lake of the Woods with the Mississippi, he observed that it was evidently the intention of the Treaty of Peace that both nations should have access to, and enjoy the free use of that river; and he doubtless meant that this access should be to each nation through their own territories. He remarked, that commissions, which I had proposed for ascertaining the relation of the Lake of the Woods and the Mississippi, if any doubt remained on this head, and running the line between these two waters, according to your proposition, might establish such a boundary as would secure to each nation this object. To the remark I made no reply, other than by observing that the line suggested was what naturally seemed to be demanded by just interpretation, where such a mistake had happened, as was herein supposed; but this I did, however, chiefly with a view of not assenting to his proposal, and in a manner rather declining than courting the discussion. It will probably be persisted in; and I much doubt if the Government will be inclined to adjust any boundary in this quarter, that has not the right desired for its basis.

I have considered it important to apprise you of the view entertained by the British Government in this respect, that the President may have an opportunity, if he should choose, to forward Mr. King any instructions relative to the boundary in question. The papers marked A, herewith enclosed, are copies of the notes that passed from me to Lord Hawkesbury, and minutes of the proposals made him in conversation, and traced out on the maps before mentioned, and of his note in reply. These, with the above detail of what passed in conversation, will communicate to you all that has been, or probably will be, done on this subject, before Mr. King's return, which may be expected in November, and doubtless before Lord Hawkesbury will have an opportunity of consulting the persons alluded to in his note.

Your letter of 20th July, with the enclosed copy of the letter of the Secretary of the Treasury to the Comptroller, respecting the portages, or carrying places, and the exemption from duty of small vessels trading between the northern and northwestern boundaries, came to hand on the 10th of September, and I lost no time in stating their contents to Lord Hawkesbury in a note, (copy whereof is herewith enclosed,) in order to rebut any argument in favor of the pretensions of the British traders, from a supposed acquiescence on the part of the Government of the United States

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and to insist on such a construction of the terms, portages, and carrying places, as might comport with the safety of the revenue of the United States, and the interest of their citizens. I afterwards had a conference with him on this subject, in which he acceded to the construction contained in my note; and, as to the tonnage duty, he said it certainly merited, and should receive, all due consideration.

I have the honor to be, with great consideration and respect, sir, your obedient and humble servant,
C. GORE.

Mr. Gore to Lord Hawkesbury.

GREAT CUMBERLAND PLACE,
August 24, 1802.

Mr. Gore presents his compliments to Lord Hawkesbury, and has the honor to inform him that, since the departure of Mr. King, he has received for this gentleman instructions and a full power from the President of the United States, to adjust, by amicable negotiation, with the Government of His Britannic Majesty, whatever remains unsettled as to the boundaries between the territories of the two nations.

Mr. Gore takes the liberty of proposing to his Lordship to communicate to him, whenever he shall be at leisure to attend thereto, the views of the President of the United States, in order that his Lordship may give to the subject such consideration as he shall think its importance requires; and that, having a distinct knowledge thereof, his Lordship may, on the return of Mr. King, be enabled to concur in such measures for defining and settling the boundary lines between the two countries, as shall appear most conducive to their mutual interests and future harmony.

Mr. Gore flatters himself that Lord Hawkesbury will see, in this proposal of the President, a new proof of the sincere and earnest desire of the Government of the United States to live in friendship with that of His Britannic Majesty, inasmuch as it invites to an adjustment, by amicable negotiation, of not only whatever may now be the occasion of inquietude between the parties, but also of everything, as far as can be foreseen, which may interrupt in future that good understanding so essential to the interests and happiness of both nations.

Mr. Gore to Lord Hawkesbury.

GREAT CUMBERLAND PLACE,
September 22, 1802.

Mr. Gore presents his compliments to Lord Hawkesbury, and has the honor to inform him that the President of the United States, ever desirous to continue uninterrupted the harmony so happily subsisting between the Government of said States and that of His Britannic Majesty, and by a constant vigilance and unremitted attention to every circumstance that might have a tendency, however remote, to disturb the same, in order to prevent its effect by such seasonable interposition as the occasion may require, has given

directions that it should be represented to His Majesty's Government, that certain traders, subjects of His Britannic Majesty, have set up pretensions to transport goods and merchandise, free of duty, through certain rivers, and over tracts of country, in the northwestern parts of the United States, and entirely within their jurisdiction, under the clause of the third article of the Treaty of Amity, Commerce, and Navigation, between the said United States and His Britannic Majesty, which provides "that no duties shall be payable on any goods which shall merely be carried over any of the portages, or carrying places, on either side, for the purpose of being immediately re-embarked, and carried to some other place or places."

Mr. Gore flatters himself that, if his Lordship should take the trouble to look into the article referred to, he will see that such claims derive no support from the most liberal construction of the terms relied on, namely, the right to carry goods, exempt from duty, "over portages or carrying places;" and that these words, so used, can never intend other cases than where the waters forming a boundary between the parties become unnavigable, and where a transit by land is thence required and resorted to, in order to re-enter the common waters where they are again navigable.

While the United States are actuated by the most sincere and earnest desire to give every facility to the trade and commerce of the subjects of His Britannic Majesty, not inconsistent with a due regard to the rights of their own citizens, and the safety of their revenue, they have been obliged to resist, as incompatible with these, pretensions so unauthorized, and must speedily make such regulations in this respect, as the security of their public revenue renders indispensable; not, however, interfering, in the smallest degree, with the rights of His Britannic Majesty's subjects, under the stipulations of said treaty, which will always be held sacred by the Government of the United States.

Mr. Gore has also the honor, according to the instructions of his Government, to represent to Lord Hawkesbury, that the United States, with a view to render the intercourse as convenient and free as possible to their citizens and the subjects of His Britannic Majesty living in the north and northwestern boundaries of said States, and in the British provinces of Upper and Lower Canada, and thereby promote a good understanding between the inhabitants thereof, by removing all impositions on the vessels of either trading there, at their last session passed an act to exempt from tonnage duty all vessels, whether British or American, not above fifty tons burden, trading between the ports of the northern and northwestern boundaries of the United States, and the British provinces of Upper and Lower Canada.

He is also directed further to represent to His Majesty's Government, that vessels of the United States, in the British ports, within the same waters, are subject to a duty of six cents per ton. The disposition manifested by His Majesty's Government to concur in equalising the situation of

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vessels of the two countries, and to do it rather by abolishing than assimilating the duties on them, raises an expectation, on the part of the President of the United States, that His Majesty's Government will be disposed to place vessels belonging to citizens of said States, in such British ports, on an equality with those of the subjects of His Majesty in the ports of the United States within said waters.

Mr. Gore to Lord Hawkesbury.

GREAT CUMBERLAND PLACE,
September 28, 1802.

Mr. Gore presents his compliments to Lord Hawkesbury, and has the honor to transmit, herewith enclosed, minutes of what he took the liberty to suggest, in conversation with his Lordship this morning, relative to the unascertained boundaries between the United States and the possessions of His Britannic Majesty.

Mr. Gore requests his Lordship will please to consider them, conformably to his declaration then personally made to his Lordship, as intended to afford a general idea of the views of the President of the United States on the subject to which they relate, rather than containing proposals not liable to modification, at the will of the American Government, or its representative; it being distinctly understood that the same may be altered as reflection shall suggest to Mr. King, or any other person to whom the negotiation may be committed at a future day, should it not be finished by this gentleman in the ensuing Winter, of which, however, Mr. Gore will not permit himself to doubt, as so many reasons concur to evince the fitness of the present time for adjusting and establishing, for the mutual benefit of the parties, the boundaries referred to; which, being left open and unsettled until, as the natural and almost inevitable consequence of such a state of things, private gain and individual passion shall intermingle themselves in the question, will prove the most fruitful source of difference and misunderstanding between two nations whose essential interests demand the most amicable and friendly intercourse.

MINUTES, &c.

Boundaries from the mouth of the St. Croix, through the Bay of Passamaquoddy, and to the Atlantic ocean.

Beginning in the middle of the river St. Croix, at its mouth; thence, direct to the channel between Pleasant point and Deer island on the east and north, and Moose island and Campo Bello on the west and south, and round the northeastern point of Campo Bello island, to the Bay of Fundy.

Boundaries between the United States and New Brunswick.

In tracing and establishing the boundary between the United States and New Brunswick, there may be some question what are the highlands intended by the Treaty of Peace?

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To run the line from the source of the St. Croix, and fix the point at which it is to terminate, no mode more proper seems to suggest itself than that of instituting a commission, and appointing Commissioners, as in the fifth article of the treaty of 1794; the report of whom to ascertain and establish this part of the boundary, as in the second article of the treaty of 1783, having due regard to the idea that the line ought to terminate on the ground dividing the rivers falling into the Atlantic from those emptying themselves into the St. Lawrence.

The same Commissioners may be authorized to substitute for the description of the boundary between the point so fixed and the northwesternmost head of Connecticut river, a line drawn along the said highlands, with such reference to intermediate sources of rivers by straight lines, as will admit of easy and accurate execution hereafter, and best comport with the apparent intentions of the treaty of 1783.

Boundary from the Lake of the Woods to the Mississippi.

The second article of the treaty of 1783, supposes that the most northwestern point of the Lake of the Woods may be connected with the Mississippi, by running a line due west from that point, and that a line so drawn would intersect that river.

The highest source of the Mississippi is now supposed to be south of the Lake of the Woods, and consequently a line due west from its northwestern point will not touch any part of said river.

If this be true, some provision is necessary to complete the boundary of the United States and the British possessions in this quarter, by amending the second article of the treaty of 1783 in that respect, according to the stipulations of the fourth article of the treaty of 1794.

Supposing the most northern branch of the source of the Mississippi to be south of the Lake of the Woods, as seems now to be understood, it is suggested, as consistent with justice and the mutual convenience of the parties, to establish the boundary of the United States in this quarter, by a line running from that source of the Mississippi which is nearest to the Lake of the Woods, and striking it westwardly, as a tangent, and from the point touched along the watermark of the lake to its most northwestern point, at which it will meet the line running through the lake.

Commissioners might be appointed to ascertain the local relation of the Mississippi to the Lake of the Woods, and, if as was supposed by the Treaty of Peace, to run the line there agreed on. But if the relative situation of these two waters be as now believed, to establish the boundary by running a line as above described.

** To the original were added the second article of the definitive Treaty of Peace of 1783; the fourth article of the Treaty of Amity, Commerce and Navigation, &c. of 1794, (both which articles relate to the boundaries;) and the following

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Extract from Mackenzie's voyage.

"The Lake of the Woods is in latitude $49^{\circ} 37'$ north, and longitude $94^{\circ} 31'$ west.

"The northernmost branch of the source of the Mississippi is in latitude $47^{\circ} 38'$ north, and longitude $95^{\circ} 6'$ west, ascertained by Mr. Thomson, astronomer to the Northwest Company, who was sent expressly for that purpose in the spring of 1798. He, in the same year, determined the northern bend of the Missouri to be in latitude $47^{\circ} 32'$ north, longitude $101^{\circ} 25'$ west; so that, if the Missouri were even to be considered as the Mississippi, no western line could strike it."—*History of the Fur Trade*, page 85.

Lord Hawkesbury to Mr. Gore.

DOWNING STREET, Oct. 4, 1802.

Lord Hawkesbury presents his compliments to Mr. Gore, and has the honor to acknowledge the receipt of his note of the 28th ultimo, together with the minutes which were enclosed in it.

Lord Hawkesbury is fully sensible of the expediency of adjusting, by some definitive arrangement, the several points to which those minutes refer, and will be ready to enter into a negotiation for that purpose either with Mr. Gore or Mr. King, within as short a period as the circumstances of the case will conveniently admit. In the mean time, it may perhaps be necessary for Lord Hawkesbury to obtain information from persons in the country on some of the subjects which are likely to be brought into discussion. But Mr. Gore may be assured that Lord Hawkesbury is desirous of avoiding any unnecessary delay, and that he will feel the sincerest disposition to terminate the negotiation in such a manner as may be reciprocally advantageous both to Great Britain and to the United States, as may tend, by removing all causes of future dispute, to improve and conciliate the harmony and good understanding which so happily subsists between the two countries, and which are so essential to their several interests and prosperity.

Extract.—The Secretary of State to Rufus King, dated

DEPARTMENT OF STATE,
December 16, 1802.

By the communications of the 6th day of October, received from Mr. Gore, it appears that the proposition for adjusting the boundary in the northwest corner of the United States is not relished by the British Government. The proposition was considered by the President as a liberal one, inasmuch as the more obvious remedy for the error of the treaty would have been by a line running due north from the most northern source of the Mississippi, and intersecting the line running due west from the Lake of the Woods; and inasmuch as the branch leading nearest the Lake of the Woods may not be the longest or most navigable one, and may consequently favor the wish of the British Government to have access to the latter. The proposition, for these reasons, would not have been made but from a desire to

take advantage of the present friendly dispositions of the parties for the purpose of closing all questions of boundary between them. As it is not probable, however, that the settlement of this particular boundary will for some time be material, and as the adjustment proposed is not viewed by the British Government in the same light as by the President, it is thought proper that it should not for the present be pursued; and that the other questions of boundary should be adjusted with as little delay as possible. In the meantime, further information with respect to the head waters of the Mississippi, and the country connected with them, may be sought by both parties; it being understood that the United States will be as free to be guided by the result of such inquiries, in any future negotiation, as if the proposition above referred to had never been made by them. Should it be most agreeable to the British Government to have an early survey instituted, with a view to a proper boundary in this case, the President authorizes you to concur in such an arrangement.

Mr. King to the Secretary of State.

LONDON, February 28, 1803.

SIR: I have duly received your letters of 16th and 23d December. By Lord Hawkesbury's desire, I have conferred with Colonel Barclay respecting the continuation of the boundary through the bay of Passamaquoddy, who has made no objection to the line we have proposed, though he appears to think that it would be improper to cede to us the island of Campo Bello, unless the cession should be desired by its inhabitants. No objection has been made to our title to Moose island; and at present I foresee nothing to impede a settlement of this boundary, except the difficulty of engaging the Minister to bestow upon the subject sufficient time to understand it. With regard to the line between the source of the St. Croix and the northwest corner of Nova Scotia, I have no reason to suppose there will be any objection to its being ascertained in the way we have proposed. Not having been able to fix the attention of Lord Hawkesbury upon the subject, I am not able to give you any information concerning the line between the northwest corner of Nova Scotia and the head of Connecticut river, or between the Lake of the Woods and the Mississippi.

With perfect respect and esteem, I have the honor to be, sir, your obedient and faithful servant,
RUFUS KING.

Mr. King to the Secretary of State.

LONDON, May 13, 1803.

SIR: I have the honor to transmit herewith the convention which I yesterday signed, in triplicate, with Lord Hawkesbury, relative to our boundaries.

The convention does not vary anything material from the tenor of my instructions. The line through the bay of Passamaquoddy secures our interest in that quarter. The provision for running, instead of describing, the line between the

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northwest corner of Nova Scotia and the source of the Connecticut river has been inserted, as well on account of the progress of the British settlements towards the source of the Connecticut, as of the difficulty in agreeing upon any new description of the manner of running this line, without more exact information than is at present possessed of the geography of the country.

The source of the Mississippi nearest to the Lake of the Woods, according to McKenzie's report, will be found about twenty-nine miles to the westward of any part of that lake, which is represented to be nearly circular. Hence, a direct line between the northwesternmost part of the lake, and the nearest source of the Mississippi, which is preferred by this Government, has appeared to me equally advantageous with the lines we had proposed.

With respect and esteem, I have the honor to be, sir, &c.
RUFUS KING.

Report of the Committee of the Senate on the foregoing Convention.

Mr. Adams, from the committee to whom the treaty with Great Britain, signed at London, on the 12th of May, 1803, was referred, reported thereon, as follows:

That, from the information they have obtained, they are satisfied that the said treaty was drawn up by Mr. King three weeks before the signature of the treaty with the French Republic of the 30th of April, and signed by Lord Hawkesbury, without the alteration of a word; and that it had, in the intention of our Minister, no reference whatsoever to the said treaty with the French Republic, inasmuch as he had no knowledge of its existence. But, not having the means of ascertaining the precise northern limits of Louisiana, as ceded to the United States, the committee can give no opinion whether the line to be drawn, by virtue of the third article of the said treaty with Great Britain, would interfere with the said northern limits of Louisiana or not.

[The following papers were communicated to the Senate with the foregoing report.]

Mr. Adams to the Secretary of State.

DECEMBER 16, 1803.

SIR: Some difficulty having arisen in the Senate, in considering the expediency of advising and consenting to the ratification of the Treaty of Limits between the United States and Great Britain, signed on the 12th of May, 1803, a committee of that body has been appointed to inquire and report upon the subject.

The difficulty arises from the circumstance that the treaty with the French Republic, containing the cession of Louisiana, was signed on the 30th of April, 1803, twelve days earlier than that with Great Britain; and some apprehension is entertained that the boundary line, contemplated in the third [fifth] article of the latter, may, by a possible future construction, be pretended to

operate as a limitation to the claims of territory acquired by the United States in the former of these instruments.

But, as the ratification, if it can be effected without unnecessary delay, is a desirable object, it has occurred to the committee that Mr. King may possibly have it in his power to give information which might remove the obstacle. I have, therefore, in behalf of the committee, to ask whether, from any information in possession of your Department, or which may be obtained, in such manner as you may deem expedient, it can be ascertained whether the third article of the treaty with Great Britain was concluded with any reference whatsoever to that with the French Republic, or with any right or claim which the United States have acquired by it.

I am, with much respect, sir, your very humble and obedient servant,

JOHN QUINCY ADAMS.

The SECRETARY OF STATE.

The Secretary of State to Mr. Adams.

DECEMBER 16, 1803.

SIR: Having transmitted to Mr. King the inquiry contained in your letter of —, I have received the answer, of which a copy is enclosed. The Office of State possesses no further information on the particular point in question with the committee.

With great respect, I have the honor to be, sir, your most obedient, humble servant,

JAMES MADISON.

Rufus King to the Secretary of State.

NEW YORK, Dec. 9, 1803.

SIR: The draught of the Convention with Great Britain respecting boundaries, having been settled in previous conferences, was drawn up and sent by me to Lord Hawkesbury on the 11th of April; on the 12th of May the Convention was signed, without the alteration of a word of the original draught; and, on the 15th of May, the letter of Messrs. Livingston, and Monroe, (a copy of which was annexed to my No. 100,) announcing the treaty of cession with France, was received and communicated by me to Lord Hawkesbury. At the date of the signature of the Convention with Great Britain, I had no knowledge of the treaty with France; and have reason to be satisfied that Lord Hawkesbury was equally uninformed of it. It results, that the Convention with Great Britain was concluded without any reference whatsoever to the treaty of cession with France.

With perfect respect and esteem, I have the honor to be, your most obedient faithful servant.

RUFUS KING.

[The following resolution was passed by the Senate.]

IN SENATE U. S. Feb. 9, 1804.

Resolved, unanimously, That the Senate do advise and consent to the ratification of the Convention between the United States and His Britannic

Relations with Morocco.

Majesty, for fixing the boundaries between the United States and great Britain, concluded at London, May 12, 1803, with the exception of the fifth article.

MOROCCO.

[Communicated to the Senate, November 4, 1803.]

*To the Senate and House of
Representatives of the United States :*

By the copy, now communicated, of a letter from Captain Bainbridge, of the Philadelphia frigate, to our Consul at Gibraltar, you will learn that an act of hostility has been committed on a merchant vessel of the United States, by an armed ship of the Emperor of Morocco. This conduct on the part of that Power, is without cause and without explanation. It is fortunate that Captain Bainbridge fell in with and took the capturing vessel and her prize. And I have the satisfaction to inform you, that, about the date of this transaction, such a force would be arriving in the neighborhood of Gibraltar, both from the East and West, as leaves less to be feared for our commerce, from the suddenness of the aggression.

On the 4th September, the Constitution frigate, Captain Preble, with Mr. Lear on board, was within two days sail of Gibraltar, where the Philadelphia would then be arrived with her prize, and such explanations would probably be instituted as the state of things required, and as might, perhaps, arrest the progress of hostilities.

In the meanwhile it is for Congress to consider the provisional authorities which may be necessary to restrain the depredations of this Power, should they be continued.

TH. JEFFERSON.

NOVEMBER 4, 1803.

U. S. FRIGATE PHILADELPHIA,
East of Malaga about ten miles.
August 29, 1803.

DEAR SIR: I wrote you from Gibraltar on the 24th instant, mentioning that we should sail the next morning for Malta.

Hearing at the Rock that two Tripolitans were off Cape de Gatt, made me proceed with all expedition to examine that part of the Spanish coast. On the 26th, it blowing very fresh, at 8 P. M. being nearly up with Cape de Gatt, fell in with a ship carrying only her foresail, which had a brig in company, under the same sail. It being night, and her guns housed, prevented an immediate discovery of her being a cruiser. After hailing for some time, found that she was a vessel of war from Barbary. On which information, I caused her boat to be sent on board the frigate Philadelphia, with her passports, from which I discovered that she was a cruiser belonging to the Emperor of Morocco, called Meshboha, commanded by Ibrahim Subarez, mounting twenty-two guns, and manned with one hundred men. By not making ourselves known to the officer who came on board,

he confessed that the brig in company was an American, and had been with them three or four days; was bound to some port in Spain; had been boarded by them, but not detained. The low sail the brig was under induced me to suspect that they had captured her, notwithstanding their having your passport, which it must appear from the sequel was only obtained to protect them against the American ships of war. I sent my first lieutenant on board, to examine if they had any American prisoners. On his attempting to execute my orders, he was prevented by the captain of the cruiser. This increased my suspicion, and I sent a boat with armed men to enforce my intentions. After they were on board, they found Captain Richard Bowen, of the American brig Celia, owned by Mr. Amasa Thayer, of Boston, and several of his crew, who were taken the 17th instant from Barcelona, bound to Malaga, within two or three leagues of the Spanish shore, and about twenty-five miles to the eastward of Malaga. The captain and crew they had confined below deck, which they always did when speaking a vessel. After making this discovery, I instantly ordered all the Moorish officers on board the frigate, for I had no hesitation in capturing her after such proceeding on their part, and violation of the faith of passports, which ought to be sacred. Owing to the high wind and sea, it took me the greatest part of the night to get the prisoners on board, and man the prize; which detention occasioned losing sight of the brig. The following morning, discovering many vessels in divers directions, the day was spent by the frigate and prize in chasing to find the captured brig. About 4 P. M. made her coming round the Cape de Gatt from the eastward, standing close in shore for Almeida bay, owing to the wind being very fresh. We were going slow in approaching her: the greatest exertions were made by Lieutenant Cox, in towing and rowing the prize. Fortunately, the wind increased in the evening, and we recaptured her at 12 o'clock at night. The Moors confessed that they came out for the sole purpose of capturing Americans to besent to Tangier. I have received a paper from them, written in Moorish, which they say is their authority from the Governor of Tangier for so doing. I enclose this to John Gavine, Esq., with a particular request to have it safely conveyed to you, that you may be informed of the circumstances, and act accordingly. I believe the Governor of Tangier is much disposed for hostilities with the United States: the Moorish prisoners accuse him as the sole cause of their present situation. I sincerely hope that this capture may be productive of good effect to the United States with the Emperor, who may be assured that if he unjustly goes to war with the United States he will lose every large cruiser he has; and God grant that it may not in the least prove a disadvantage to you. My officers and self have made it a marked point to treat the prisoners not only with the lenity that is due from humanity, but with particular attention to civility, to impress on their minds a favorable opinion of the American character. That you may receive this information as early as possible, I despatch my boat on shore

Impressment of American Seamen.

at Malaga, to request W. Kirkpatrick, Esq. Consul, to forward it by express to Gibraltar. I shall be extremely anxious to hear from you, as also for the arrival of Commodore Preble, to receive his instructions relative to the captured ships. I am bound to Gibraltar bay with the prize, but am fearful that we shall be detained for want of an eastwardly wind. I am, &c.

WM. BAINBRIDGE.

[Communicated to the Senate, December 5, 1803.]

*To the Senate and House of
Representatives of the United States:*

I have the satisfaction to inform you that the act of hostility mentioned in my Message of the 4th of November, to have been committed by a cruiser of the Emperor of Morocco on a vessel of the United States, has been disavowed by the Emperor. All differences in consequence thereof have been amicably adjusted, and the Treaty of 1786 between this country and that has been recognised and confirmed by the Emperor, each party restoring to the other what had been detained or taken. I enclose the Emperor's orders given on this occasion.

The conduct of our officers, generally, who have had a part in these transactions, has merited entire approbation. The temperate and correct course pursued by our Consul, Mr. Simpson, the promptitude and energy of Commodore Preble, the efficacious co-operation of Captains Rodgers and Campbell of the returning squadron, the proper decision of Captain Bainbridge, that a vessel which had committed an open hostility was of right to be detained for inquiry and consideration, and the general zeal of the other officers and men, are honorable facts which I make known with pleasure. And to these I add, what was indeed transacted in another quarter, the gallant enterprise of Captain Rodgers, in destroying, on the coast of Tripoli, a corvette of that Power of twenty-two guns. I recommend to the consideration of Congress a just indemnification for the interests acquired by the captors of the Mishouda and Mirboha, yielded by them for the public accommodation.

TH. JEFFERSON.

DECEMBER 5, 1803.

[Translation.]

Praise be given to God alone. May God be propitious to our master Mahomet and to his family.

Know all those who shall see this noble writing—all our governors—those encharged with our affairs, and captains of our vessels, that the American nation are still, as they were, in peace and friendship with our person exalted by God.

Their vessels are safe both at sea and in port, and so are their merchants; and you are not to disturb the peace between us and them. What has happened with their and our vessels, has only been an affair among the vessels; but the said nation continues respected as they were with us, and under all security, and equally so their vessels.

Wherefore, we hereby order that all those of

our governors; those charged with the command of our ports, and captains of our vessels who shall see this writing, that they act in all respects for the fulfilment of this order, and that they do not deviate therefrom; those who shall contravene it will be punished with a severe punishment.

This order was given on the 21st Chemadi, the second in the year 1218, (9th October, 1803.) and at last we are in peace and friendship with the said American nation, as our father (to whom God be merciful,) was, according to the Treaty made on the first day of Rhamadan, in the year 1200.

The original of the foregoing was translated from Arabic to Spanish by Don Manuel de Baccas, and from Spanish to English by

JAMES SIMPSON.

Certified at Tangier, October 15, 1803.

[Translation.]

Praise be given to the only God. May God be propitious to our master Mahomet and to his family.

Our servant the Governor Ben Abdel Sadak, and all officers of our port of Mogadore: May God assist you. Peace, with the mercy and blessing of God, be with you.

Now know ye, that the Almighty having reconciled what had happened with the American nation because of the acts of the vessels, and that we are now, as we were before, with them in peace and friendship, as settled with our father, (to whom God be merciful!)—Take care—take care that none of you do anything against them, or show them any disrespect or disregard, for they are, as they were, in friendship and in peace, and we have increased our regard for them in consequence of the friendship they have manifested to our person, which God has exalted. And we order that you be careful and diligent in all their concerns, and we order that you do well with their vessels and with their merchants. Peace be with you all.

October 11, 1803.

The original of the foregoing was translated from the Arabic to Spanish by Don Manuel de Baccas, and from Spanish to English by

JAMES SIMPSON.

Certified at Tangier, October 17, 1803.

IMPRESSMENT OF AMERICAN SEAMEN.

[Communicated to Congress, December 5, 1803.]

To the Senate of the United States:

In compliance with the desire of the Senate, expressed in their resolution of the 22d November, on the impressment of seamen in the service of the United States by the agents of foreign nations, I now lay before the Senate a letter from the Secretary of State, with a specification of the cases of which information has been received.

TH. JEFFERSON.

DECEMBER 5, 1803.

Impressment of American Seamen.

DEPARTMENT OF STATE, Dec 2, 1803.

SIR: Agreeably to a resolution of the Senate, passed on the 22d of last month, requesting the President of the United States to cause to be laid before them such information as may have been received relative to the violation of the flag of the United States, or to the impressment of any seamen in the service of the United States, by the agents of any foreign nation, I do myself the honor to transmit to you the enclosed abstract of impressments of persons belonging to American vessels, which, with the annexed extracts from the letters of some of our agents abroad, comprises all the information on the subject that has been received by this Department since the report to Congress, at its last session, relative to seamen. To the first mentioned document I have added a summary showing the number of citizens of the United States impressed and distinguishing those who had protections as citizens; those who are stated to be natives of the British dominions, and not stated to be naturalized as citizens; and those of all other countries, who are not equally stated to have been naturalized in the United States.

Another source of injury to our neutral navigation has taken place in the blockade of Guadeloupe and Martinique, as notified in the annexed letter from Mr. Barclay, Consul General of His Britannic Majesty for the Eastern States.

Besides the above, I have received no official information of any material violations of our flag during the present European war, except in the recent aggressions of the Emperor of Morocco.

With very high respect, I have the honor to be, sir, your most obedient servant,

JAMES MADISON.

The PRESIDENT of the United States.

[The abstract of names is omitted. But the following is a summary of impressments by the British from American vessels:]

DEPARTMENT OF STATE,
December 2, 1803.

Forty-three impressments of citizens of the United States appear to have been made, of whom twelve had protections.

Ten of natives of the British dominions, and not stated to be naturalized as American citizens; and

Seventeen of all other countries, who are not stated to have been naturalized in the United States.

Summary of Impressments by the agents of other Powers, from American vessels.

Two by the agents of France.

One by the agents of the Batavian Republic.

Extract of a letter from James Maury, Esq., Consul of the United States at Liverpool, to the Secretary of State.

MARCH 24, 1803.

"I had the honor to write to you on the 25th ultimo, since which the alarm of war has occa-

sioned a great press for seamen. Many of ours, confident, as I suppose, in the continuance of peace, had not taken the caution, before leaving home, to be furnished with regular documents of citizenship, which exposes them to impressment."

Extract of a letter from John Fox, Esq., Consul of the United States at Falmouth, to the Secretary of State.

MAY 14, 1803.

"The impress is very severe. The citizens of the United States are not molested; two or three, without protections, and on board British ships, have been taken. I have made application for their release, but it is necessary that the seamen should bring certificates of their citizenship with them, otherwise they will run great risk of being impressed."

Extract of a letter from Wm. Savage, Esq., agent of the United States, for the relief and protection of their seamen at Jamaica, to the Secretary of State.

JUNE 25, 1803.

"There has been a hot press throughout this island. In this port about sixty seamen have been taken out of American vessels; immediately after which, I made application to the Admiral, who liberated the American citizens. Some few vessels on the north side have lost their men, and have experienced distress from the measure. The names of the persons impressed I have a minute of, and on the arrival of the frigates, in which they are, I shall make application for their discharge."

Copy of a letter from Thomas Barclay, Esq., Consul General of His Britannic Majesty for the Eastern States of the United States, to the Secretary of State.

OCTOBER 20, 1803:

SIR: I have the honor to enclose you the copy of a letter which I yesterday received from Commodore Hood, Commander-in-Chief of His Majesty's ships of war on the windward station, notifying the blockade of the islands of Martinique and Guadeloupe by the squadron under his command.

I have the honor, &c.

THOMAS BARCLAY.

CENTAUR, OFF MARTINIQUE,
July 25, 1803.

SIR: I beg you will have the goodness to acquaint the American Government, and agents of neutral nations, the islands of Martinique and Guadeloupe are, and have been, blockaded by detachments of His Majesty's squadron, under my command, since the 17th June last, that they may have no plea for attempting to enter the ports of those islands. By your acknowledging the receipt of this, you will greatly oblige, sir, your most obedient servant,

SAMUEL HOOD,

Commodore and Commander-in-Chief.

T. BARCLAY, Esq., Consul General, &c.

Relations with Spain.

SPAIN.

[Communicated to the Senate, Dec. 21, 1803.]

To the Senate of the United States :

On the 11th of January last, I laid before the Senate, for their consideration and advice, a convention with Spain on the subject of indemnities for spoliations on our commerce, committed by her subjects during the late war; which convention is still before the Senate. As this instrument did not embrace French seizures and condemnations of our vessels in the ports of Spain, for which we deemed the latter Power responsible, our Minister at that Court was instructed to press for an additional article comprehending that branch of wrongs. I now communicate what has since passed on that subject. The Senate will judge whether the prospect it offers will justify a longer suspension of that portion of indemnities conceded by Spain, should she now take no advantage of the lapse of the period for ratification. As the settlement of the boundaries of Louisiana will call for new negotiations on our receiving possession of that province, the claims not obtained by the convention now before the Senate may be incorporated into those discussions.

TH. JEFFERSON.

DECEMBER 21, 1803.

Extract of a letter from the Secretary of State to Charles Pinckney, Esq., Minister Plenipotentiary, &c., at Madrid, dated

MARCH 8, 1803.

The Convention signed with Spain in August, though laid before the Senate at an early day, had no question taken on it till the close of the session. It was then postponed till the next session, which is to commence in November. More than a majority, but less than two-thirds, which the Constitution requires, would have acquiesced in the instrument in its present form; trusting to the success of further negotiations for supplying its defects, particularly the omission of the claims founded on French irregularities. But it is understood that it would have been a mere acquiescence; no doubt being entertained that Spain is bound to satisfy the omitted as well as the included claims. In explaining, therefore, the course taken by the Senate, which mingles respect for the Spanish Government with a cautious regard to our own rights, you will avail yourself of the opportunity of pressing the reasonableness and the sound policy of remodelling the convention in such a manner as to do full justice. I need not repeat the observations heretofore made on the Spanish responsibility for the conduct of French citizens within Spanish jurisdiction; but it may be of use to refer you to the enclosed copy of a royal order issued by the Spanish Government in 1799, which will enable you to remind them of their own view of the subject at that time. In this document it is expressly declared, that the French consular jurisdiction was not admitted, and that French consuls in Spanish ports were in the same condi-

tion with those of every other nation. After such a declaration against the authority of French consuls, the Spanish Government would be chargeable with no less disrespect to the French Republic than to itself, in saying that Spain was not left at liberty to prevent an exercise of the usurped authority; and, if at liberty, she is indisputably answerable for the consequences of not preventing it. A document, which I add, will explain the just sentiments entertained by the Batavian Government during the same period, in relation to a case turning on the same principle.

Extract of a letter from the Secretary of State to Charles Pinckney Esq., Minister Plenipotentiary, &c., at Madrid, dated

MARCH 22, 1803.

As the convention you signed with Spain will be now submitted to further negotiation; it will be proper, in addition to the general remarks contained in preceding letters, to suggest some particular alterations which are calculated to remove doubts, and to provide for its convenient execution.

1st. The words "excesses of individuals," in the caption of the convention, are liable to exception. The term "excesses" has not a definite meaning in the sense in which it is here used, and "individuals" might be restricted at least as a purely English word to private citizens or subjects, as distinguished from those who are vested with public authority. The English part of the caption in the words quoted uses the preposition *of* in lieu of the Spanish words *cometidas por*, which are preferable.

It is believed that the form of words, "who have sustained losses, damages, or injuries, in consequence of the wrongs committed by the subjects or citizens of either nation, or under color of authority from it," &c., would be an improvement of importance.

2d. From the first section, it would seem that the fifth commissioner is to be appointed by the common consent of the two nations, or, in case of disagreement, by lot from two persons, one of whom is to be named by each nation. The formation of the board would be very much facilitated by substituting the agency of the commissioners on each side, in the appointment of the fifth commissioner either by consent or by lot.

3d. To equalise the compensation of the commissioners, to provide for the payment of the expenses of the board, and to obviate the case of the death, sickness, or necessary absence of either of them, the eighth article of the British Treaty will serve as an approved model.

4th. It would be desirable to add the words "justice, equity," before the laws of nations, &c. in the close of the second article, and a clause to the oath, whereby the commissioners should engage not to sit at the decision of a case in which they might as individuals be directly or indirectly interested.

5th. The third article limits the term within which claims are to be made to eighteen months;

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but the board should be vested with a power to extend it further in special cases, so as not to exceed two years in all. The close of this article admits of the same alteration as was suggested above with regard to the caption.

6th. A criticism, perhaps an unfounded one, having been made upon the word testimony, used in the fourth article, as if it were restricted to parole deposition, it may not be amiss to change it for the word evidence, or to couple them, so as to read "all testimony and evidence, the authenticity of which," &c.

A perseverance in our claims, grounded on the wrongs permitted to be done by French cruisers and tribunals, it is expected will produce a correspondent alteration in the whole convention, and a retrenchment of the sixth article. It will be obvious to you how convenient it will prove if you can terminate your negotiation so as to produce the requisite modifications of the convention in season to preclude its reconsideration in the Senate, at their next session, in its present shape.

Extract of a letter from Charles Pinckney, Esq., Minister Plenipotentiary of the United States at Madrid, to the Secretary of State, dated

MAY 12, 1803.

I find, by your letter of the 22d, that the convention signed with this country is to be submitted to further negotiation, on the ground, I suppose, principally, that it did not include the claims for French captures. Your letters, to which the only one I have received refers, have not yet come to hand, and therefore I only know it is to be submitted to further negotiation; and that with some alterations respecting the mode of appointing to vacancies in the commission; extending the time at the discretion of the board to two years; equalising the compensation; altering the terms "excesses of individuals," and the expression respecting testimony. I am to persevere in obtaining redress for the French captures and wrongs permitted to be done by French cruisers and tribunals, which will certainly produce, if obtained, an alteration in the whole convention. I have been some time endeavoring, in every conversation I have had, to obtain the promise to include the arbitration of the French captures; but without effect: for it may be necessary here to state, that, although Mr. Cevallos did positively, in one of his letters last summer, promise to include them, if I would add the words "segun los principios que constituen la moralidad de las acciones," yet that very day, or a very short time after, when I had some inclination to add the words, and take the clause with that addition, he flew the way, and would not agree to it. I was, therefore, obliged to take the convention, such as it was, or none at all; and as it gave up nothing, secured very important and extensive claims, and opened the door to others, I always hoped the Senate would have ratified it conditionally, striking out the sixth article, and annexing one including the claims for French captures and condemnations, and ordering me, in very strong and decisive terms,

to tell the Government here that they were determined to have the whole or none. Had this been done, I believe they would consent, and, as I suppose, the arbitration for the French captures and condemnations not being included was the principal objection to ratifying it at the present session, I shall now take that ground, and insist upon their being included, even if I am obliged to add the words he proposed to annex, and which I have already quoted. I shall also consider myself as not at liberty to sign any convention which does not include them in some manner that I think may be acceptable; but as this subject is one of the most grating and disagreeable that can be to the Spaniards, and as they consider it so extremely hard to be obliged to pay for the French condemnations, I wish to know your positive instructions, whether I am to make them an indispensable part of the convention, and not to sign or agree to any which does not include them in some shape. This is the ground I take at present; and as the Spaniards are not very quick in any of their negotiations, and are particularly crowded with business at this time, when they expect war between France and England, and of course that they will be involved, it is not improbable your instructions may reach me before I conclude the business. Should war take place, it is then very probable I shall succeed, and I shall govern the style of my representations by the probability or improbability of a rupture.

Mr. Pinckney to the Secretary of State.

MADRID, August 2, 1803.

DEAR SIR: My last despatches, and those which preceded them, will have conveyed to you the propositions I submitted to this Government on the subject of our claims, and particularly the captures and condemnations by the French; they will also have informed you of the anxious manner in which I have been expecting the arrival of Mr. Monroe since the 20th of May, hopeful that the instructions he would bring might enable me to add such offers, or bring the question of the spoiliations by the French in some manner before this Government, to tempt them to accede to our propositions. After waiting until nearly the beginning of this month,* I received a letter from Mr. Monroe and Mr. Livingston, acquainting me with the cession of Louisiana; and another from Mr. Robert Livingston yesterday, saying that Mr. Monroe was gone to London, to reside there as Minister from the United States. In consequence of this, I have again pressed upon this Government a decision with respect to the French captures and condemnations, and have desired an audience on Tuesday.

While I expected Mr. Monroe, and supposed that, in treating respecting Florida, something could have been proposed which might have induced this Government to include our claims for French spoiliations and condemnations, notwith-

* It seems probable that this date, and the following, are advanced, and that this letter was written in July.

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standing I had, in pursuance of your instructions, brought them forward, I forbore to push them, lest I might injure the other and more important parts of the negotiation; but the moment I received official information from Mr. Monroe and Mr. Livingston that Louisiana was ceded, and that they considered the cession as including West Florida, and that Mr. Monroe was not coming, I then pushed the new propositions respecting our claims, in that positive and decided manner which the circumstances of Europe, and the particular situation of Spain, seemed to me to warrant. In my letter (No. 1) you will perceive the manner in which the new propositions were submitted, and the copy of the new convention; these went in the last despatches. After waiting for some time to see whether Mr. Monroe would arrive with the extraordinary commission, and finding it doubtful, I wrote the letter (No. 2); and immediately on being informed that Mr. Monroe would not come, I demanded an audience of Mr. Cevallos, the Secretary of the Foreign Department, in which I went over the whole ground of our difference in opinion, and repeated to him, at length, not only all the arguments used in my letters, but such others as occurred in the course of conversation, or as I thought the particular and doubtful situation of Spain at present warranted.

I entered fully into the impropriety of Spain's having suffered her ports to be used for the purpose of equipping privateers to cruise upon our vessels, and bringing them in as prizes, and permitting the Consuls of France to condemn them; by which means her territorial sovereignty was not only violated, but her ports, which we ought to have considered not only as the ports of a neutral and a friend, but of a nation in treaty with us, were, by that means, converted into those of an enemy. For what could France do more with her ports against us than equip and man privateers in them, and bring in and condemn our vessels? Spain did not permit us to do so; and if she had offered it, she well knew the offer was of no consequence to us, because the distance from the United States, and the contiguity of the French coasts created a difference in the exercise or use of the permission, which made it extremely important to the one, and of very little consequence to the other. That there can be no doubt that any nation which lends the aid of its ports for the purpose of arming privateers, aids in annoying the commerce of those against which these privateers are intended to cruise; that, further, any nation which vests within its dominions a foreign tribunal, with the power of condemning and selling the property of a neutral nation, assists in depriving the citizens of that nation by force of their property. Hence, it would seem, a permission to arm privateers and sell prizes, granted to one belligerent Power, is inconsistent with the impartiality due to both by a nation which professes to be neutral; that it would not destroy the argument to say the same privileges might be granted to both; that, in our late differences with France, it could not, for the United States never suffered their public or private vessels to capture

the merchant ships of France, and, it is believed, in no instance could the privilege operate equally in favor of two nations; from their maritime strength, local situation, or other cause, the one must always benefit by it more than the other; hence, one of them must be materially injured, if it was granted to both. For example: suppose Spain and Russia were engaged in war; would the United States do them equal justice by opening her ports for the arming of their privateers, and the sale of their prizes? Nobody would suppose she did, when he recollected that all, or nearly all, the rich commerce of Spain passes before the ports of the United States, and that Russia has no commerce in that quarter of the world. Again: if unfortunately there was a war between the United States and Spain, would England do equal justice to both, if she opened the port of Gibraltar to both, for the purpose of arming privateers and selling prizes? Certainly not; for, by doing so, she would give to the United States the most advantageous position from whence to annoy the commerce of Spain; and to Spain she would give the use of a port three thousand miles distant from the United States, and not more useful to her than her own on the Mediterranean.

From these and other examples, I endeavored to convince him how peculiarly Spain is situated, and how important it is to her to put an end to a practice so contrary to the principles of justice and strict neutrality. I repeated to him that these observations, together with those which have been, from time to time, during the last four years, offered by my predecessor and myself to the consideration of His Majesty, are believed to be sufficient to entitle us to demand compensation from His Majesty for the property wrested from us by those whose actions he had a right, and most certainly the power, to control; that the respect which the Government of the United States had for His Majesty had induced them to urge the point, which they considered as a point of national honor, with the greatest moderation, as was proved by their offering to refer the question to arbitration, although they were perfectly conscious of their right to demand payment without a reference, of which they had given a proof before they had become interested themselves. But that if Spain will not agree to the principle of neutral right, and chooses to adopt as a part of her public law the practice of opening her ports for the arming of privateers and selling of prizes, I am sure the United States would, in point of mere interest, be benefitted by following the example, after obtaining compensation for the losses they have already sustained.

In order to meet the observations he made before, that His Majesty was not, by the law of nations, liable for the condemnations by the French Consuls, I repeated to him the observations of *Vattel*, in his 3d book, and particularly in the paragraphs sect. 15, 95, 97, 102, and 104; and endeavored to show him how incompatible these aggressions were with the duties enjoined to neutrals; that, at the time *Vattel* and others had written on the laws of nations, no such case had occurred;

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no such new, extraordinary, or unwarrantable attempts had been made to erect, within any country, tribunals independent of its authority. I endeavored to impress upon him the manner in which our Government had defeated a similar attempt upon them at an earlier period of the war, well knowing that, to permit such an exercise of the rights of war within their cities, would be to make their coasts a station of hostility. To show him that we did not stand alone in our opinions on this licentious attempt to exercise the rights of war within neutral countries, where no rights have ever before been exercised, I read and explained to him the doctrines laid down in the English Court of Admiralty, by Sir William Scott, in the celebrated case of the *Flad Oyen*, Martensen, master; and which, as you have no doubt seen, I shall not trouble you with repeating. I concluded with informing him that our Government considered this as a point of national honor, which they could never relinquish; that, as war had again commenced between Great Britain and France, the decision of Spain on this subject was become now indispensable; that we knew not to what other parts its flames will soon extend; that our commerce must never again be exposed to similar depredations, and that our Government were determined, upon this occasion, to show how far they would protect it; that, having arranged all their differences with France and England, it now rested solely to do so with Spain; that, to do this, they had offered an equal and amicable arbitration, and that I had waited with great patience for their decision; that, however, being now instructed to transmit His Majesty's answer, so that it might be received by the meeting of Congress, the period had arrived when I could delay no longer applying to his Excellency for a prompt and decisive one, which I was hopeful he would give me in a few days, as I had two American gentlemen only waiting to take it to America.

In his answer, he went over the old ground, that Spain, not having authorized, but expressly forbidden, the exercise of this power by the French Consuls, was not, in his opinion, liable to make reparation; that the more he had considered the subject, the more he was convinced; and that, in his view of it, the quotations I had made from *Vattel* did not apply; that, since the last year, he had been informed, from the best sources, that many leading men in our (the American) Government were in sentiment with him that Spain was not liable; and that even some of our best informed lawyers had given the same opinion. I replied, it was incredible to me that any men of information, whether in our Government or among our gentlemen of the bar, could have given such an opinion; that, if they had, I had never heard of it; that it was always safest for his Excellency to take the sentiments and views of our Government, as they respected Spain, from me; that I could assure him every branch of our Government was not only decided in their opinion as to the liability of His Majesty to make compensation, but determined never to relinquish it, at least

so far as to insist upon its being included in the arbitration; that the Senate not having ratified the convention, ought to be full proof of their determination upon this subject; that it was time our Government should know His Majesty's decision, and I must request to have it by the day Mr. Young sailed. He said that was impossible, as the royal feasts, and other occupations of His Majesty, for this month, in which he was obliged to attend him, would put it entirely out of his power; but that he would give it as soon as he could. I then informed him that I considered it as my duty to write, and asked him, "whether I was to transmit to our Executive, as His Majesty's final decision, that he could not consent to include in the convention the captures and condemnations by the French and their Consuls." He hesitated, and said, no. The serious manner in which I put this question seemed to have affected him. He added, "The subject, with your representations, are now before His Majesty, and I will state what has passed further this evening;" at the same time assuring me I should have a very speedy answer. He then went on to converse with me on the subject of the cession of Louisiana by the French to us, in which he expressed an opinion so important and extraordinary, that I made a point of transmitting it to you by the post the next day, by the route of Lisbon, and which, I trust, you will soon receive. The substance was this: that, in the cession of Louisiana by Spain to France, there was a secret article that France should never part with Louisiana, except to Spain; that if she (France) should ever wish to dispose of it, Spain should always have the right of pre-emption; from which he argued that France had not the right to make such cession without the consent of Spain, and that he was astonished our Commissioners had not applied to their Government to know the actual terms upon which France was to receive Louisiana, and, in fact, to examine their title. I answered him by saying, that he could not be more astonished at their not doing so than I was at his remark; that he well knew that Mr. Livingston and myself had been applying for upwards of a year incessantly, to the Governments of France and Spain, to know if Louisiana was ceded, and upon what terms; that, for more than a year, the most guarded silence was observed by both, and that at last, when Spain had answered and avowed the cession, not a word was mentioned in his (Mr. Cevallos's) letter to me of any secret article; that the letter only avowed the cession, and that it had been made subject to the conditions of our treaty; that I had transmitted this to Mr. Livingston and Mr. Monroe; and I asked him whether, after the sight of this letter from him, acknowledging the cession, they could for a moment doubt the perfect right of France to sell? I then further asked him whether, if Spain still continued in possession, and our Government ratified the treaty, there would be any hesitation on the part of His Majesty to give us the possession? To which he made no positive reply, nor could I bring him to do so during the whole evening. I

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could easily discover, in the course of it, that there exists at present much uneasiness on the part of this Court, with respect to the conduct of France in the sale of Louisiana, and particularly in the opinion held by our Commissioners, that it includes West Florida, which both Mr. Cevallos and the Prince of Peace expressly deny, and on which I write you a separate letter, containing my conversation with them on this subject.

AUGUST 30.

Not receiving the answer of the Secretary as soon as I expected, and anxious to transmit you the result, I followed the Court to San Ildefonso, and had another conference with him on the 24th instant. In this he informed me he was sorry so much delay had been occasioned in his reply; that it was owing to the removal of the Court, and the particular urgency of the moment, alluding, I suppose, to the state of things occasioned by the war; that, however, the answer was prepared, and would be transmitted the following day; that I would perceive in it the two grounds upon which His Majesty conceived he was not liable to make compensation for the French condemnations; and that several very respectable and learned gentlemen in the law in the United States had expressed the same opinion, a copy of which he would send me enclosed in his reply. The grounds were: the inability of Spain to prevent it, and the general relinquishment of our claims to France for everything done by Frenchmen, so far as respects the seizure of our vessels or their condemnation; and that he was convinced, when our Government came to see these opinions, and to reconsider the question, they would think, with His Majesty and his Ministers, that Spain was only liable for the acts of her own subjects, except, indeed, in the violation of their territory by foreign cruisers, which, he said, he had no objection to admit, considering it as a distinct question from that of the condemnations. I told him I believed our Government would be not a little surprised to find Spain resorting to the plea that she was not able to prevent it; that, if he pressed this argument, if he contended she was not then a free agent, and, of course, not a responsible one, and could prove it to be so, it only remained for me to transmit this reply to you for your future directions; that the relinquishment he spoke of to France has nothing to do with our claims on Spain: that we never considered ourselves as having any right to demand compensation from France for these violations of the territory and sovereignty of Spain by the cruisers and consuls of France; that they were by no means included in the claims relinquished, but were as distinct and separate as claims could be; that we had received from France a very valuable compensation, in her consent to dissolve the Treaties of Commerce and Alliance previously existing between the two nations—an alliance by which we were bound to guaranty her islands in the West Indies, and to be liberated from which was inestimable to the United States; that from Spain we had hitherto received no

compensation, and that it would be found a great part of these claims had originated since the date of the French Convention; that I still hoped he would consent to include them in some way, convinced that, if they were not provided for, our Government would remain extremely dissatisfied; that, merely from motives of conciliation, I would consent to insert them, with the addition of the words he offered the last year, "*segun los principios que constituyen la moralidad de las acciones.*" He said he was rather of opinion, from the intelligence he had received from the United States, that the thing would now be viewed in a different light, and that our Government would not insist on so hard terms, even if they had the right, as to call upon them for condemnations which they could not prevent, and not one shilling of the proceeds of which went into the pockets of His Majesty or his subjects; that he never meant, the last year, in what he said respecting the arbitration, subject to the limitation of "*segun los principios, &c.,*" to apply it to the condemnations of the French consuls, or to have left it to the Commissioners to decide upon them, but only to the violations of territory; and that, had I admitted the limitation, he would have expressly excepted the condemnations; that for the acts of his own subjects and the violations of territory by foreign cruisers, His Majesty had always been ready to arbitrate, as appeared by his letters to me of the last year; that he wished me to transmit the reply he would send me, with the opinions of the American lawyers on the subject; and that he did not doubt their future instructions to me would be such as would tend to promote the harmony and good understanding of the two Governments.

On the morning following, he sent me the enclosed answer to my several verbal and written applications, accompanied by an opinion, which I also enclose, given by Messrs. Ingersoll, Rawle, McKean, Duponceau, and Livingston, on an abstract question submitted to them, as I suppose, by the order of this Government. I considered it proper to transmit Mr. Cevallos an answer, in which you will find most of the arguments insisted upon which had been before used, and in which I object to the statement submitted to our lawyers, as not expressing either fully or truly the state of facts; that, in relinquishing our claims on France, we had done so for a valuable consideration, and that, in so doing, we had by no means relinquished our claims on Spain, as they were separate and distinct; that, for the truth of this, we referred him to the letters of my predecessor, by which it appears the Government of Spain were continually warned of the illegality of the captures and condemnations, and informed that His Majesty would be held liable to make compensation; that, in resorting to the plea that Spain could not prevent it, it was incumbent on her to show that she really could not, either by force or influence, do so, and that she had exerted herself, as far as she was able, to effect it; that, after all, if it was true she could not prevent it, but to avoid a war, or a re-

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newal of the war with France, was under the necessity of submitting to it, and of sacrificing to the preservation of peace the commerce and property of the citizens of the United States, on every principle of justice and national honor she ought now to make a compensation; that the tacit sacrifice of the property of our citizens was the price she paid for a peace, inestimable to her in every respect; and that, in my judgment, she ought now most cheerfully and gratefully to submit to our proposition for an arbitration, rejoicing that we have been so moderate as to acquiesce in this mode, and not to demand, not only immediate compensation for the losses, but satisfaction for the injury to our national honor; that it should be recollected the opinions of gentlemen of the law, however respectable as professional men, were not to direct our Government; that they were supposed to be the best judges of our public rights, and had alone the authority to treat respecting them, and, when necessary, to devise the means of asserting and protecting them; and that even the opinions he produced could easily be proved to be in our favor.

As I cannot now expect that Spain will agree to include the claims for the condemnations by the French Consuls, it will remain for you to direct what is best to be done. You will consider how far her plea that she could not prevent it entitles her to consideration, and whether it appears, in any of our applications to the French Government previously to the signing of the Convention of 1800, we applied to them for compensation for the captures and condemnations by the French privateers and Consuls within the territory of Spain, or included them in those claims which were afterwards relinquished. In determining this, much will depend upon the correspondence of our Envoys or Commissioners who made the Convention with the French Envoys, and I will thank you for the necessary information, and copies of such of his letters respecting the claims as may be proper.

From the above you will see the state of the negotiation, and with what anxiety this Government wish to avoid inserting the claims for the condemnations by the French. I have no doubt Mr. Yrujo has been very industrious on this subject in the United States, and Mr. Azzara in Paris, in endeavoring to collect all the intelligence they can, to prove that we considered these as claims *on France*; that our commissioners had urged them as such; and that they are included in the general relinquishment to that nation. As I do not believe this to have been the case, I have continued to urge them as separate claims, which could be alone made on this Government; and you will perceive, by my letter to Mr. Cevallos, that I do not by any means agree with him, or acquiesce in his doctrines. Upon the whole of this business, it appears to me, that, in the present state of Europe, it would be politic in us to endeavor to arrange all the claims on Spain, by conditionally ratifying the convention already sent, striking out the sixth article, and inserting one including such of the claims for French cap-

tures and condemnations as you are determined to insist upon, and accompanying it with a specific offer to Spain to purchase Florida, or such part of it as now remains to her; for, on the subject of the limits of Louisiana and Florida, I am otherwise apprehensive we may have some difficulties. Mr. Livingston and Mr. Monroe officially informed me they considered West Florida as included in the cession. This the Prince of Peace and Mr. Cevallos strongly deny; and, unless we can come to some agreement with Spain for the cession of all their claims on Florida, we may, as I have observed, have some difficulties with them. This appears to me, also, to be the best time; for Spain must eventually be involved in the war; and, cut off from her resources in South America, her trade destroyed, and her people without bread, a sum of money would go a great way in tempting her to sell. We are now, also, sure of the influence and assistance of France in persuading them to do so; for General Bournonville, the French Ambassador, told me lately he had received orders from his Government to promote, as far as he could, a disposition in this Court to sell Florida to the United States. Notwithstanding Mr. Monroe has not come on, I am continually conversing with the leading men here on this subject, and keeping it constantly in their view; but, not conceiving myself now authorized to make any explicit offer, and not knowing exactly what proportion of West Florida you will *insist upon* as ceded to the United States by France, I wait your further instructions, which I request may be as particular and as explicit as possible; not wishing, in affairs of so great pecuniary importance, to have too much left to my discretion. I take the liberty to recommend the bearer, Mr. Young, to the President and yourself, as an excellent and deserving public officer. Please present me in the most respectful and affectionate manner to the President, and believe me, with sincere regard and affectionate respect, dear sir, yours truly.

CHARLES PINCKNEY.

Mr. Pinckney to Mr. Cevallos.

MADRID, May 23, 1803.

I have the honor to inform your Excellency, that, after the most mature reflection and deliberation, the Government of the United States are of opinion they cannot, consistently with the honor of their Government, or those interests of its citizens which it is their duty to support, consent to any convention with His Majesty for the arbitration in settlement of their respective claims, which shall not include the arbitration of all the claims arising, as well from the acts of Spanish subjects, as those of aliens or foreigners within the Spanish territory, contrary to the laws of nations, or the treaty existing between His Majesty and the United States, and that, in order to allow time for including this class of claims, they have postponed coming to any decision on the convention formed between your Excellency and myself, until the next session of the Senate, in November. In consequence, therefore, of their precise and

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positive instructions, I now submit a new convention which they expect His Majesty will consent your Excellency should sign, for the following reasons: That your Excellency has already agreed to arbitrate all the acts of Spanish subjects, contrary to the treaty and the law of nations, and all the infractions of the Spanish territory by foreign privateers; and, in your Excellency's letter of the 26th June, did positively agree to insert all the other claims arising from the acts of aliens, if I would consent to insert after the words "*ó de otros*," the words "*cuyos excesos puedan imputarse al Gobierno Español segun los principios que constituyen la moralidad de las acciones y su responsabilidad.*"

As it was unusual to insert expressions of this kind, and I did not conceive my instructions as warranting it, I objected at that time to the insertion, and preferred trying the opinion of our Government on a Convention confined solely to the acts of Spanish subjects, and leaving the question respecting those of aliens to future negotiation. It is, however, the opinion of our Government that, when the two Governments go to the expense and trouble of constituting this Board, it ought at once to be authorized to consider and decide upon all their mutual claims.

From the dispositions, or rather assent, at first manifested by your Excellency, and on perusal of your letters, a more favorable as well as speedy issue was expected to this negotiation by our Government, and it is still hoped and expected that modifications may be devised that will make the contested article satisfactory to Spain, without being unjust to the United States.

The true object is to give to the board a power that will reach every description of cases. According to information received from time to time, it appears that losses have been sustained by citizens of the United States: first, on the high seas; secondly, within the territorial jurisdiction of Spain herself; thirdly, within the jurisdiction of her colonies: that they have proceeded, first, to the Treaty of 1795; or, secondly, to the law of nations; or, thirdly, to substantial justice. It is desirable, therefore, that a stipulated provision for repairing these injuries should be so expressed as to be commensurate with this view of the cases; or, if this extent cannot be explicitly given to the provision, that it should be as little narrowed as possible.

The objection made to giving the board cognizance of the wrongs committed by aliens within the jurisdiction, and, consequently, within the temporary allegiance of the King of Spain, is clearly open to the reply I made to it. The authority which every Sovereign has over the conduct of aliens within his territorial jurisdiction, makes him responsible to others for their conduct, as much, and for the same reason, as he is responsible for the conduct of permanent citizens or subjects. This is a doctrine too well established, both by reason and by public law, to be questioned. The United States have pursued it in practice, as well as in discussion; and may, therefore, with the more energy, claim the benefit of

it. The remark of your Excellency, that the stipulation on this subject, in our Treaty of 1794 with Great Britain implies that, without such a stipulation, the law of nations would not have imposed on the United States the responsibility assumed, admits of a double answer. The United States acquiesced in the doctrine before the Treaty was made; and the stipulation in the Treaty, like numerous stipulations in other treaties, was not meant to supersede the rule of public law, but to acknowledge and explain it.

It is not denied that there are certain exceptions to the authority over those within a temporary, which do not apply to the authority over those within a permanent allegiance; and so far there may be exceptions to the responsibility of the Sovereign also. But none of these exceptions belong to the cases in question. In the equipment of privateers, and the condemnation of prizes in Spanish ports, the King of Spain had the same authority to restrain aliens as he had to restrain his own subjects from illegal acts towards other nations. Having this authority, his duty to other nations required him to exert it; and, failing in this duty, he made himself answerable to those injured by the failure.

The losses sustained by Americans from aliens, and for which Spain is held answerable, have proceeded, first, from condemnations within her jurisdiction known to be against the American trade; thirdly, from equipments ostensibly made against the enemies of Spain, but turned against the United States; fourthly, from captures only within the limits of Spanish jurisdiction.

With respect to the first two cases, it is clear that the Spanish Government had not only the right but the power to interpose effectually; and is, consequently, bound to repair the consequences of her omission. With respect to the fourth case, the violations of her territory might be less under her control, where the prizes were not carried into her ports. Still, however, with the right accruing to her against the aggressors, accrues, at the same time, the right against her to the sufferer.

It is my duty to inform your Excellency, and my instructions direct me to do so, that the course pursued by the Senate of the United States, in postponing the decision on the convention until the next session, in order that His Majesty should have time to consent to incorporate and include the arbitration of the claims arising from acts of aliens within the Spanish territories, while it maintains a cautious regard for our own rights, exhibits, at the same time great respect for the Spanish Government. Every branch of our Government is of opinion that the arbitration of these claims ought to be included, and that, by the law of nations, Spain is clearly answerable for the acts of aliens within her territory and jurisdiction; and, notwithstanding the time which has already been spent, and the ruinous delays which have taken place, they still rely on the well known honor of His Majesty, to remodel the convention, so as to do ample justice.

But, in order to remove all doubt on the sub-

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ject, and to show how well founded is the right the United States have to expect that this class of claims will be admitted at least to arbitration, I am also directed to refer your Excellency to the enclosed copy of a royal order, issued by the Spanish Government in 1799, which must remind your Excellency of the view of your Government, and of their opinions at that time on this subject. In this document it is expressly declared, that the French Consular jurisdiction was not admitted in Spain, and that French Consuls in Spanish ports were, and always have been, in the same condition only with those of every other nation.

After such a declaration against the authority of French Consuls, the Spanish Government never can say, nor have they ever said, they were not left at liberty to prevent an exercise of the usurped authority; and, if at liberty, she is indisputably answerable for the consequences of not preventing it. A document which I also take the liberty to add, will explain the just sentiments entertained by the Batavian Government during the same period in relation to a case turning on the same principle.

This subject has been so often and so long before your Excellency, that it is not necessary for me to go again into the other arguments heretofore used to prove to your Excellency the policy and justice of the measure. Our Government relies confidently on the justice and honor of His Majesty, and on the promise contained in your letters, and particularly that of the 26th June last, in which you say you consent to the inclusion of the words "*de otros*," and in the arbitration of claims for damages arising from the acts of aliens, with the addition of this comment, for its clear signification: "*o de otros cuyos excesos puedan imputarse al Gobierno Español segun los principios que constituyen la moralidad de las acciones y su responsabilidad.*" The present convention is drawn in conformity with that limitation, with some few alterations of no moment, which our Government wishes for the more convenient caption, in which, instead of the words "excesses," &c., I have substituted "in consequence of the wrongs committed by the subjects or citizens of either nation, or under color of authority from it, or by others within the territory of either nation." An alteration in the mode of filling up vacancies in the commission, should a vacancy occur after formation of the Board, as it would prevent their going on, and be extremely inconvenient and expensive to wait the nomination from the United States of an American commissioner to fill a vacancy, which would now be the case. An article also is added to equalise the payment of the commissioners, and to provide for the payment of the expenses of the Board. We wish, also, the Board to be vested with power to extend the time, if they think proper, in special cases, six months longer, so as not to exceed, in the whole, two years.

Your Excellency will find the whole substantially the same as the last, except with the addition to the claims for the acts of aliens, and I am particularly enjoined by my Government to request as early a decision as possible. Should your

Excellency not approve the form exactly as it is now sent, I will then thank your Excellency to be so obliging as to favor me with one which you will sign; it being, however, necessary for me to state to your Excellency that I do not consider myself as now at liberty to assent to any that shall not include the arbitration of the claims arising from the acts of aliens in the territories of each.

I repeat to your Excellency my earnest request that you will be pleased to furnish me with your definitive answer for the information of my Government as early as possible, as I am particularly directed by them to endeavor to obtain and transmit it, with all the despatch in my power,

With sentiments of the most profound respect,
I have the honor to be your Excellency's obedient,
humble servant, CHAS. PINCKNEY

DON PEDRO CEVALLOS.

[Draught of the proposed convention referred to in Mr. Pinckney's letter to Mr. Cevallos, of May 23, 1803.]

A Convention between His Catholic Majesty and the United States of America, for the indemnification of those who have sustained losses, damages, or injuries, in consequence of the wrongs committed by the subjects or citizens of either nation, or under color of authority from it, or by others, within the territory of either nation, during the late war, contrary to the existing treaty or the laws of nations.

His Catholic Majesty and the Government of the United States of America, wishing amicably to adjust the claims which have arisen in consequence of the wrongs committed by the subjects or citizens of either nation, or under color of authority from it, or by others within the territory of either nation; during the late war, contrary to the existing treaty or the law of nations; His Catholic Majesty has given, for this purpose, full powers to his Excellency Don Pedro Cevallos Councillor of State, Gentleman of the Bedchamber in employment, First Secretary of State and Universal Despatch, Grand Cross of the Royal and Distinguished Order of Charles the Third, and Superintendent General of the Posts and Post Offices in Spain and the Indies; and the Government of the United States of America to Charles Pinckney, a citizen of the said States, and their Minister Plenipotentiary near His Catholic Majesty; who have agreed as follows:

1. A Board of Commissioners shall be formed, composed of five commissioners, two of whom shall be appointed by His Catholic Majesty, two others by the Government of the United States, and the fifth by common consent. And in case they should not be able to agree on a person for the fifth commissioner, each party shall name one, and leave the decision to lot. And, hereafter, in case of death, sickness, or necessary absence of any of those already appointed, the remaining commissioner or commissioners of the nation to which the commissioner so dead, sick, or necessarily absent belonged, shall be authorized to proceed to the appointment of another to replace him; and

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the new commissioner shall take the same oath or affirmation, and do the same duties. And it is agreed that the commissioners shall be respectively paid in such manner as shall be agreed between the two parties—such agreement being to be settled at the time of the ratifications of this convention. And all other expenses attending the said commissioners shall be defrayed jointly by the two parties—the same being previously ascertained and allowed by the majority of the commissioners.

2. The appointment of the commissioners being thus made, each one of them shall take an oath to examine, discuss, and decide on the claims which they are to judge, according to the law of nations and the existing treaty, and with the impartiality justice may dictate, and not to act directly or indirectly in any case in which they are directly or indirectly interested.

3. The commissioners shall meet and hold their sessions in Madrid, where, within the term of eighteen months, or in special cases, at the discretion of the board, two years, (to be reckoned from the day on which they may assemble,) they shall receive all claims which in consequence of this convention may be made, as well by the subjects of His Catholic Majesty as by citizens of the United States of America, who may have a right to demand compensation for the losses, damages, or injuries sustained by them in consequence of the wrongs committed, by the subjects or citizens of either nation, or under color of authority from it, or by others, within the territory of either nation, during the late war, contrary to the existing treaty or the law of nations.

4. The commissioners are authorized by the said contracting parties to hear and examine, on oath, every question relative to the said demands, and to receive as worthy of credit all testimony or evidence, the authenticity of which cannot reasonably be doubted.

5. From the decisions of the commissioners there shall be no appeal; and the agreement of three of them shall give full force and effect to their decisions, as well with respect to the justice of the claims as to the amount of indemnification which may be adjudged to the claimants—the said contracting parties obliging to satisfy the said awards in specie, without deduction, at the times and places pointed out, and under the conditions which may be expressed by the Board of Commissioners.

6. The present convention shall have no force or effect until it be ratified by the contracting parties.

In faith whereof, we, the underwritten Plenipotentiaries, have signed this convention, and have affixed thereunto our respective seals.

Done at Madrid, this ____ day of ____.

Mr. Pinckney to Mr. Cevallos.

I have waited for some considerable time, to have the favor of your Excellency's reply to the representations I had the honor to make, in conformity to the orders of my Government, on the subject of the claims for captures and condemnations. I was hopeful the respectful manner in

which our Government had treated the subject, by postponing their final decision until His Majesty could have time to decide on the propriety of admitting the arbitration of the claims for captures of our vessels by the French, within the territory of Spain, and condemnations in their ports, and the arguments adduced in support of the justice and equity of the arbitration proposed, would have long since convinced your Excellency of the propriety of acceding to our proposition; and I am induced to flatter myself your Excellency will still do so. In referring to the arguments which have been already so often and so much at length adduced in support of our claims, I shall now only say that our Government, on a candid and deliberate review of the subject, are convinced that they never can, in honor to their nation, or in justice to its citizens, totally relinquish these claims; that they have again charged me, in the most positive terms, to request a definite and speedy answer from His Majesty. They well know that, according to substantial justice and the law of nations, they are warranted in demanding payment for all the vessels so illegally captured or condemned by the French; but, in that spirit of friendship and forbearance which has always governed their councils, and particularly as they respect His Catholic Majesty, they have forbore to make the demand for payment in the first instance, and have only asked for an equal and fair arbitration, which it appears to me, on maturely considering the subject, his Majesty will not refuse.

When two nations differ on a point like this—each equally entitled to form its own opinion, and sufficiently powerful to assert its honor and protect its rights, *and each seriously determined not to relinquish them*—there are no modes of terminating the difference but those of war or arbitration. Our Government, while seriously determined never to relinquish their claims, have long and amicably proposed the latter. They have again charged me to call for a definitive answer, in order that His Majesty's determination may be known before the next meeting of the Congress. I do, therefore, again most earnestly request of your Excellency to favor me with a reply to the propositions I made for a new convention, and with the form of such a one as your Excellency will approve, and of the terms on which you will consent to arbitrate the French captures and condemnations.

It is now uncertain whether Mr. Monroe will come on with the new commission extraordinary from our Government directed to him and myself at all, or if he should bring it, when; but if he does, its objects are entirely distinct from these claims—the urging the definitive answer to which my Government has again pressed on me in so serious a manner, that I am confident your Excellency will have the goodness to favor me with as early a reply as possible.

I avail myself, with pleasure, on this occasion, to offer to your Excellency the homage of the high respect and perfect consideration with which I have the honor to be your Excellency's most obedient humble servant.

C PINCKNEY.

DON PEDRO CEVALLOS.

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Mr. Pinckney to Mr. Cevallos.

MADRID, July 15, 1803.

Before your Excellency gives the definitive answer to the propositions made to you by order of my Government—that answer which is probably to determine the relation hereafter to subsist between the two countries—I once more take the liberty of requesting you to reconsider the arguments that have been before used, and the extremely mild and moderate terms I have offered of only arbitrating claims which the laws of nature and nations, as well as those of honor and justice, give us a right to demand compensation for, and that without reference.

Your Excellency having fully conceded the point, that the French Consuls had no right to exercise the power of condemning vessels in Spanish ports, I shall not trouble you with arguments on that subject; but when your Excellency goes on to say that His Majesty, in having forbidden the exercise of this power by them, had done all that could be expected from him, and that he was not liable by the law of nations for the condemnations and sales made by the said Consuls of American vessels and cargoes, either before or after his prohibition, I not only differ with your Excellency, but assert that, by the law of nations, His Majesty is expressly liable for every condemnation and sale which the Consuls were permitted to make in his dominions.

I presume your Excellency will not deny that the authority which His Majesty has over the conduct of aliens within his territorial jurisdiction, makes him responsible to others for their conduct, as much, and for the same reasons, that he is responsible for the conduct of permanent citizens or subjects.

Your Excellency will also allow that, unless otherwise specially provided for by treaty, according to the law of nations, the French Consuls could only exercise the powers therein defined, and that the moment they stepped beyond them, and particularly to the injury of innocent aliens, trading under the sanction of a solemn treaty, it became a duty on His Majesty, not only to forbid the exercise of this unwarrantable and injurious power, but to see that his order was fully carried into effect. To merely issue an order to prohibit it, and not to see it carried into execution, is to do nothing; it operates as a delusion, because, by issuing the prohibition, you hold out an opinion to foreigners that no such authority exists, while in fact it is suffered to be executed to an extent and with a rigor never before heard of. Your Excellency will not say Spain had not the power to prevent its exercise, because we well know she had, and the honor of her Government will not permit her for a moment to resort to this argument. She received the French Consuls only on the footing of other Consuls, and with the same privileges and powers, as she has expressly declared. If they exceeded these, to the injury of innocent neutrals, and, after being forbidden by His Majesty still continued to do so, I presume the necessary means should have been used to prevent them. As these

means were not used, and as Spain permitted them to continue the exercise of this unheard-of authority while she had the power to prevent it, and ought to have done so, according to that principle of the law of nations which declares that "*qui non prohibet quando prohibere possit jubet*," His Majesty is to be considered as much liable, in every respect, for these condemnations and violations of territory, as if they had been done by his own subjects, or by his own express authority.

In the equipment of privateers, and the condemnation of prizes in Spanish ports, His Majesty most surely had the same authority to restrain aliens as he had to restrain his own subjects from illegal acts towards other nations. Having this authority, his duty to other nations required him to exert it; and, failing in this duty, I am charged by my Government to repeat it to your Excellency, as their decided opinion, that His Majesty has made himself liable to make reparation.

I beg leave to refer your Excellency to the general representation made by my predecessor on this subject, on the 24th of January, 1800, and to those made by myself since my arrival, and to the rules established by *Vattel*, b. 3, §15, 95, 97, 102, and 104, which show how incompatible these aggressions are with the regulations prescribed by the law of nations for the government of neutral countries. I shall only add, that the United States consider this question as a point of national honor which it is impossible for them to relinquish; and I can assure your Excellency, with great truth, and I am charged to do so, that it is one on which every branch of our Government is decided and unanimous; that having before refused to relinquish points of national honor, either to Great Britain or to France, they are determined not to do so to Spain; convinced that, if they did, they would have soon to meet similar questions with other countries; but that, having proved, as it is their duty to do now, that our rights must be respected, we shall then have some reason to hope they will remain in future unassailed.

The arbitration of the claims for illegal captures and condemnations by the French and their Consuls, however interesting before, has become now, not only extremely important, but absolutely indispensable. War has again commenced between Great Britain and France; we know not to what other parts of Europe its flames will extend; the American commerce must never again be exposed to similar depredations, and their Government must, upon this occasion, show how far they are determined to protect it. Having arranged all their differences with Great Britain and France, it now rests solely to do so with Spain; to effect this, they have offered an equal and amicable arbitration. Your Excellency will do me the justice to say, I have proposed and endeavored to accomplish this with all the calmness and moderation in my power, and perhaps, with more patience than the nature and circumstances of the case warranted. It arose from the friendship I knew my Government had for Spain,

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and my earnest wish to preserve the peace of the two countries. The period has now arrived when my instructions require me to delay no longer, but to apply to your Excellency for a prompt and decisive answer. I made this application to your Excellency verbally yesterday, and I now repeat it in writing, and I earnestly hope it may be such a one as it will give me pleasure to transmit.

If your Excellency could send me such definitive answer by the 20th instant, I will be obliged, as the American Consul for Madrid leaves this on the 22d for the United States.

With sentiments of the most profound respect and perfect consideration, I have the honor, &c.

CHARLES PINCKNEY.

Don PEDRO CEVALLOS.

First Sec'y of State, &c.

Mr. Cevallos to Mr. Pinckney.

ST. ILDEFONSO, Aug. 23, 1803.

SIR: In the project of a convention or treaty relative to indemnities, which I transmitted to you by order of the King, His Majesty yielded to all the condescensions with which he was inspired by his constant desire to maintain the best understanding and the most perfect harmony with the United States; but you have, nevertheless, thought it your duty to claim and insist that Spain ought to acknowledge herself responsible for all the injuries which the French privateers have occasioned to the citizens of the United States, by violating the Spanish territory.

It is, however, very easy for me to evince, and fully prove, that such a claim is incompatible with the law of nations; that the examples which may be cited in support of it, having been produced by political circumstances of the moment, ought not to be considered as serving for a rule, much less can they alter the invariable principles of natural law; and that as little is such a pretension conformable with the particular relations and ties by which the two nations are bound, in virtue of the Treaty of 1795. But I think it useless to enter into a detailed discussion upon these points, as well because nothing which can be said would be unknown to you, as because, on various occasions, we have sufficiently discussed them, and also because Spain can impugn this pretension on principles which are special, and peculiarly relative to the case in question.

If by the captures which the French cruisers have made of American vessels and cargoes, by violating the Spanish territory, any obligation to pay indemnities could have fallen upon Spain, it never could have been more than an accessory and conditional obligation, and of the same nature with bail, a mortgage, or pledge, whose force is dissolved as soon as the principal debtor complies with his obligation, or is released by the creditor; the latter renouncing his right. This being indubitable, it is not less so that the United States, having renounced, by the solemnity of a convention in favor of France, the principal debtor, the right which they had to claim indemnities for the losses referred to, the obligation of Spain, who,

at most, could only be considered as hypothetically responsible, must be dissolved.

That the United States have renounced, in favor of France, the right which they might have to demand indemnities for the losses which they have sustained from the French cruisers, is a fact beyond all doubt, since the convention concluded between the two Powers on the 7th Vendemiaire, ninth year, the second article of which is as follows: "The Ministers Plenipotentiary of the two parties not being able at present to agree relative to the Treaty of Alliance of the 6th February, 1778, to the Treaty of Amity and Commerce of the same date, and to the convention of the 14th November, 1778, nor relative to the indemnities mutually due and claimed, the parties will hereafter negotiate upon these subjects at a convenient time; and, until they shall be agreed upon this point, the said treaties and convention shall have no effect." Secondly, the said convention was presented to the Senate of the United States for their ratification. The Senate, perhaps, with a view to shut the door against France, in order that the treaties cited in the second article might not be renewed, was not pleased to ratify it without the total suppression of the second article; and, this suppression being made, it ratified it. The French Government, being informed of this, ratified it, on their part, in the following terms: "The Consuls of the Republic, having seen and examined the convention concluded, agreed upon, and signed at Paris, on the 8th Vendemiaire, ninth year of the Republic, approve it in all and every of the articles therein contained, declare that it is accepted, &c. The Government of the United States having added in its ratification that the convention shall be in force during the space of eight years, and having omitted the second article, the Government of the French Republic consents to accept, ratify, and confirm the above convention, with the addition which declares that the convention shall be in force during the space of eight years, and with the retrenchment of the second article: *Provided*, That, by this retrenchment, the two States renounce the respective pretensions which are the object of the said article." This stipulation having been agreed to by the Government of the United States, it results, as a consequence, that it has renounced forever the right to claim indemnities from the French Government for the aforesaid damages; and thus it was reported, in the present year, to the House of Representatives of the United States, by the committee appointed to consider the petitions presented to Congress by sundry merchants who suffered by the depredations of the French.

In our last conference, you seemed sensible of the weight of this reply; but (doubtless in order that, from your zeal for the defence of the interests confided to you, the smallest scruple might not remain of your not having attempted all the means suggested by your political skill,) you endeavored to impugn it, by striving to lay upon Spain the principal obligation and responsibility for the losses which, near her coasts, or in her ports, the French privateers and tribunals have

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occasioned to citizens of the United States. But to satisfy this reply, and to evince that the principal obligation can remain only with France, it will be sufficient merely to examine the course which the citizens injured have pursued in their claims, and in the application they have made to Congress, whereby they acknowledged that, by the renunciation which their Government made to France, they were deprived of the right of making a claim anywhere but at home; but I will, nevertheless, add another reflection, which is, that, whether France is alone responsible for the injuries done by privateers, or Spain and France jointly, if you choose to suppose it, the obligation is one, sole, and indivisible, and dissolved by the renunciation of the United States in favor of France; and thus fails the supposition necessary for their claim against Spain.

Although what I have remarked to you is of such intrinsic force that it needs no other support to arrest conviction, I cannot omit adding to you, in confirmation of the same, that the most esteemed lawyers of the United States, some of whom hold offices under the Federal Government, having had the same question which we are discussing presented to them, with only a concealment of the names of the three Powers, Spain, France, and the United States, and a substitution in their place of the first three letters of the alphabet to indicate them, have given their opinion uniformly that Spain is under no obligation to satisfy the indemnities referred to, on the supposition of the renunciation in favor of France. Annexed, I enclose to you literal copies of the question proposed to the said lawyers, who are among the most esteemed of Philadelphia and New York, and of their answers, the original of which is in my hands. By them you will see that the Government of Spain, in judging that it is not responsible for the said indemnities, judges as do the learned in highest repute in the United States; and that, in having endeavored to consult their opinion, it cannot be argued that they procured opinions partial to the interests of Spain. It has rather obtained, from the rectitude of the said learned, a sincere confession of the slender foundation on which the claims of their own country on this subject rest.

I conclude, by assuring you I should be glad if the request of the United States were of such a nature that my Government could accede to it, in order to manifest to you equally on this occasion that the cabinet of Spain does not depart from the system of generosity and condescension with which she has always acted in whatever relates to the United States; and I improve, with pleasure, this occasion to repeat to you my desires to please you, and that our Lord would guard you many years, &c.

PEDRO CEVALLOS.

CHARLES PINCKNEY, Esq.

Abstract Questions.

The Power A lives in perfect harmony and friendship with Power B. The Power C, either

with reason or without, commits hostilities against the subjects of the Power B, takes some of their vessels, carries them into the ports of A, friend of both, where they are condemned and sold by the official agents of Power C, without Power A, being able to prevent it. At last a treaty is entered into, by which the Powers B and C adjust their differences, and in this treaty the Power B, renounces and abandons to Power C, the right to any claim for the injuries and losses occasioned to its subjects by the hostilities from Power C.

Quere. Has the Power B, any right to call upon Power A for indemnities for the losses occasioned in its ports and coasts to its subjects by those of Power C, after the Power B has abandoned or relinquished, by its treaty with C, its rights for the damages which could be claimed for the injuries sustained from the hostile conduct of Power C?

Answer. We have considered the above case, and are of opinion that, on the general principles of the law of nations, the Power A is not liable to the Power B for acts done upon the vessels belonging to the subjects of Power B, by the Power C, within the ports of A, the latter not being able to prevent it. Nations are not, any more than individuals, bound to perform impossibilities.

But even leaving impossibilities out the question, and admitting that the Power A could have prevented the injury which was committed by the Power C, but refused or neglected to do it, we are of opinion that, if the Power B has relinquished the same injury to Power C, in that case the Power A is no longer liable to any responsibility in damages on account of its acquiescence.

1st. Because it appears to us that, in the present case, the Power C is to be considered as the principal party, and the Power A merely as an accessory, and that it is in that relation to each other that their several acts and their respective liability to the injured party is to be considered: now, it is in the nature of all accessory things that they cannot subsist without the principal thing; and the principal trespass being done away by the release to C, the accessory offence of A must be done away likewise, according to the well known maxim of the law *accessorium sequitur principale*.

2d. Because a release or relinquishment of a right implies in law the receipt of satisfaction, and it is contrary to every principle of jurisprudence for a party to receive a double satisfaction for the same injury; and here the injury received by B from C and from A is essentially the same: the act of those two Powers were indeed different, but the effect which they produced was the same, and that effect only can be the object of compensation in damages.

3d. Because if the Power A could be compelled to make satisfaction to Power B for the injury which the latter has released or relinquished to C, that release or relinquishment would be defeated to every useful purpose, as the Power C would be liable to the Power A for the same damages from which it was intended to be discharged by the release of B. Now a release, as well as every

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other contract or engagement, implies that nothing shall be done by the grantor directly or indirectly to defeat its *bona fide* intent or effect. If, therefore, the claim preferred by B upon A will, if admitted, indirectly defeat the release granted to C, such claim must be pronounced to be illegal.

Upon the whole, we are of opinion that the release granted by the Power B to the Power C operates also a release to the Power A, for its participation in the injury which was the object of that release.

JARED INGERSOLL,
WILLIAM RAWLE,
J. B. MCKEAN,
P. S. DUPONCEAU.

PHILADELPHIA, Nov. 15, 1802.

Answer of the Attorney General of the District of New York to the same question.

According to the above statement, I should have no doubt that B, having abandoned its rights to indemnity against C, would have no claim whatever against A, more especially as the case supposes it out of the power of A to have prevented the transaction.

EDW. LIVINGSTON.

NEW YORK, Nov. 3, 1802.

Mr. Pinckney to Mr. Cevallos.

MADRID, August 28, 1803.

I feel it my duty to reply to your Excellency's letter of the 23d instant, which was handed to me a few days ago at the Royal Sitio of San Ildefonso, the more especially as your Excellency seems now somewhat to have changed the grounds of your defence. Formerly, I thought that the question between us rested upon the law of nations, and to that point I directed my arguments; but now, your Excellency says, 1st, That we have received compensation; and 2d, (if I understand the application of the abstract question,) That Spain was not able to prevent the injuries we suffered in her ports, from the citizens or subjects of a foreign nation. Before I enter into the discussion of these new topics, I must be permitted to observe, that they appear to me somewhat inconsistent with the first position taken by your Excellency; for, if we have received compensation, it is a simple matter of fact, and at once does away the necessity of resorting to general principles, which are, unfortunately, but too apt to be misunderstood or misapplied even by those whose intentions are perfectly upright; on the contrary, if these were so evidently against us, as your Excellency is pleased to say they are, I am surprised that a resort should be had to the confession that Spain was not the mistress of her ports. The tendency of these observations, and of others which might be drawn from the same source, (but that I do not wish to dilate upon the subject,) is to produce a conviction in my mind, either that your Excellency apprehends that our claims cannot be resisted upon the general principles of the laws of nations, or that it will, on some future occasion, be injurious to Spain to admit this doctrine. If

I am mistaken, your Excellency will, I hope, do me the honor to favor me with arguments to show the application of general principles against us. Until then I shall look upon this ground as abandoned, and endeavor to prove to your Excellency that we did not, by rejecting the second article of the convention with France, relinquish our claim against Spain. It is admitted that, by this rejection, "the two States renounce the respective pretensions which are the object of the said article." Now these were (so far as relates to the present discussion) the indemnities mutually due and claimed. The question, then is, what were the indemnities mutually due and claimed? To decide upon this, we are again brought back to the general principles; and until it is shown, by the application of these, that our claim upon Spain is unfounded, it cannot be said that we have received compensation from France. The abstract question submitted to the learned gentlemen from Philadelphia and New York does not fit the present case, as, in the statement made to them, it is affirmed that the Power B renounces and abandons to Power C the right of any claim for the injuries and losses occasioned to its subjects by the hostilities from Power C. Now this is taking for granted the very thing to be proved, and consequently, any deductions drawn from such premises are inadmissible: the question ought to have been, did the Power A violate the laws of nations, by suffering the Power C to make free use of her ports in arming privateers to cruise against the vessels of Power B, and also, by suffering her to establish in the same courts for condemning and selling the said vessels when brought in as prizes? And if this is a violation of the law of nations, whether is the Power B to seek redress from Power C or the Power A? Your Excellency must admit that this is the simple question stripped of any extraneous matter; and if it is determined that the Power B has its resource against the Power A, then no subsequent arrangement with the Power C can affect this claim, unless it expressly includes it. Does, then, the arrangement between France and the United States express the relinquishment of any claims which the latter may have upon Spain? It certainly does not, for Spain is not mentioned in this arrangement. Hence it follows, that if our claim against Spain is supported by the law of nations, or the principles of justice, it cannot be vitiated by our convention with France. Your Excellency well knows that the practice of our Government, and the reclamations of my predecessor, show that we held Spain liable for the injuries we received in her ports; and this clearly proves that, by ratifying the convention with France, we meant not to relinquish our claims upon Spain; and I must suppose that your Excellency did not, until very lately, think we had done it, as I do not remember that you ever before advanced the opinion; and certainly, if it was well founded, there could not be a stronger argument against us, and I am sure it is one which would not have escaped the enlightened mind of your Excellency. There is another inaccuracy, as it applies to

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the present case, in the abstract question alluded to above, for it turns principally upon the inability of the Power A to prevent, within its ports, the aggressions of the Power C. This I presume could not have been the case with Spain, and the circumstance of an Algerine vessel being delivered up in Cadiz proves that it was not; but at all events, whatever might have been the inability of Spain, it was incumbent on her to make an effort proportionate to the object, and, if she then failed, her moral obligation ceased; but if, for wise and prudential considerations best known to herself, she chose not to make this effort, but rather to suffer the property of her friends to be sacrificed in her ports, this was the price which she paid for peace, and to those at whose expense the payment was made, she is certainly bound in honor to make compensation. We admitted this reasoning when it operated against ourselves; for we paid the British for their vessels sold in our ports by the French, because we did not, at the time, think it prudent to use all our efforts to procure the restoration of them. This is precisely a case in point, and, having paid then, we have a better right to receive now.

I have thus endeavored to answer the objections of your Excellency, and to show that nothing has been done on either side to impair that claim which accrues to us against His Majesty, from the general principles of justice, as sanctioned by the laws and usages of nations. I have so repeatedly urged the force of these principles in my favor, without receiving from your Excellency more than a simple denial of my conclusions, that I cannot suppose it would be useful to say anything more as to that point. It now only remains for me to inform your Excellency, that I shall forward to the United States the letters which have passed between us, and also a detail of our conversations, that my Government may have this subject before them, as fully as it is in my power to place it. They will then determine what it is proper for them to do: but I cannot close this letter without reminding your Excellency of the unpleasant situation in which they will be placed. Convinced that it can neither be the interest nor the intention of His Majesty to injure them, they will yet see with regret that, for some years past, the conduct of Spain has not been altogether as friendly towards them as they could have wished. I will not probe too deeply into this subject; but I feel it my duty to tell your Excellency, that, in my opinion, something must be done on the part of His Catholic Majesty to adjust our well founded claims in an equal and honorable manner, or I fear he will lessen the friendship of the people and Government of the United States, which has hitherto been sincere and respectful; and I do hope that His Majesty will direct his Minister in the United States to make to our Government some conciliatory propositions, which may tend to preserve a friendly and harmonious intercourse between our two nations; or, if it is more agreeable to His Majesty to make me the organ of these communications I beg your Excellency to believe that it would

not be possible to impose on me a more pleasing task, for it is my most anxious wish to prevent a misunderstanding between our two countries, connected together by mutual wants, and freed from the jealousies of a rival commerce, or interfering or rival productions.

With sentiments of the most profound respect and perfect consideration, I have the honor to be, your Excellency's most obedient, humble servant.

DON PEDRO CEVALLOS,
First Secretary of State, &c.

GREAT BRITAIN AND FRANCE

[Communicated to the Senate, Feb. 1, 1805.]

To the Senate of the United States:

According to the desire expressed in your resolution of the 28th instant, I now communicate a report of the Secretary of State, with documents relative to complaints against arming the merchant ships and vessels of the United States, and the conduct of the captains and crews of such as have been armed.

JAN. 31, 1805.

TH. JEFFERSON.

DEPARTMENT OF STATE,
January 31, 1805.

The Secretary of State, to whom the President of the United States has been pleased to refer the resolution of the Senate of the 28th instant, requesting that there may be laid before the Senate such documents and papers, or other information, as the President should judge proper, relative to complaints against arming the merchant ships or vessels of the United States, or the conduct of the captains and crews of such as have been armed, has the honor to annex hereto:

1st. A copy of a letter addressed to the Secretary of State by the Envoy of Great Britain, dated on the 31st of August last.

2d. An extract of a letter to the same, from the late Chargé d'Affaires of France, dated May 6, last, which was preceded and followed by other letters and conversations of the same gentleman, urging the subject upon the attention of the Government. It has been also urged, by the present Minister of France, in his interviews with the Secretary of State.

Of the enclosures alluded to in the aforesaid letter and extract, the only authenticated statement, relative to the conduct of American private armed vessels, which has been received at this Department, is contained in the annexed letter from Mr. George Barnewall, of New York, and the document accompanying it.

All which is respectfully submitted.

JAMES MADISON.

No. 1.

Mr. Merry to the Secretary of State.

PHILADELPHIA, Aug. 31, 1804.

SIR: I have received information respecting several vessels which have of late been armed in,

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and have sailed from, the different ports of the United States: some loaded with articles contraband of war, (gunpowder is said to be the general article,) others with cargoes of innocent goods, and others again in ballast. After the diligent inquiry which it has been my duty to make on so important a subject, I think that I can have the honor of stating to you, with certainty, that several vessels of the above description, which are mentioned to be schooner rigged, have sailed lately from the port of Baltimore, while others, of a larger size, even ships of considerable burden, and completely equipped for war, have sailed from the port of Philadelphia, bound to the possessions of His Majesty's enemies in the East as well as the West Indies. It is said, that the object of some of these equipments is to force a trade with the blacks in the island of St. Domingo; in which attempt, the public prints have stated so circumstantially, as to leave no doubt on the subject, that two American vessels have been captured by French cruisers, after making resistance; but I have strong reason to believe that the destination of others, particularly from the port of Philadelphia, has been with cargoes of contraband articles to the enemy's possessions in the East and West Indies. Let their destinations, however, be what they may, it cannot, I conceive, but be justly considered, that such armaments, on the part of the citizens of a neutral State, must be attended with consequences prejudicial to a belligerent Power, and may, therefore, be deemed rightly as offensive; for which reason, the law of nations has stated one of the first obligations of neutrality to be, that of abstaining from all participation in warlike expeditions. The armed vessels alluded to may become the property of the King's enemies, either by capture at sea, or by purchase in the ports to which they are destined, and are thus in readiness to be converted immediately into instruments of hostility against His Majesty; while, in another point of view, they are calculated to protect the vessels, when they are loaded with contraband articles, against the lawful search and detention of a lawfully commissioned cruiser, when the latter shall happen to be of inferior force. Indeed, I conceive that it may not be giving too great an extent to the principle of the law of nations, without attending to the nature of the cargo, to consider the very arms, ammunition, and other implements of war, with which such vessels are furnished, as contraband articles, when the vessels have been thus equipped without the authority of the nation to which they belong.

I understand, sir, that the arguments in question have, in fact, taken place under no commission or authority whatever from the Government of the United States. I have, therefore, thought it my duty to have the honor of making you acquainted with the information that has reached me on this subject; and if the observations which I have taken the liberty to make upon it should happily be conformable to the sentiments of the American Government, I can safely trust to their justice, as well as to their jealousy of observing the most strict

neutrality in the present war, to take such measures as shall appear to them the most proper for suppressing the illegal proceedings complained of, on the part of those individual citizens of the United States who shall appear to be concerned in them.

I have the honor to be, with high respect and consideration, sir, your most obedient, humble servant,
ANT. MERRY.

HON. JAMES MADISON, *Secretary of State.*

No. 2.

Extract of a letter from the *Chargé des Affaires de France*, dated May 7, 1804, and addressed to the *Secretary of State*.

The undersigned is informed, in a manner which leaves him no room to doubt it, that the American merchants who pursue this commerce, [meaning the commerce with St. Domingo,] publicly arm, in the ports of the United States, vessels which are intended to support, by force, a traffic contrary to the law of nations, and to repel the efforts which the cruisers of the French Republic are authorized to make, in order to prevent it. These armaments have also for their object to cover the conveyance of munitions to the revolted of that colony. The Government of the United States cannot be ignorant of these facts, which are public: the consequences thereof have already been manifested in the West Indies, where the public papers advise that there have been actions between the French cruisers and American vessels carrying on this commerce.

In considering the matter merely under the view of the law of nations, it is manifest that American citizens, under the very eyes of their Government, carry on a private and piratical war against a Power with which the United States are at peace. The undersigned would be wanting in his duty if he did not vindicate, under such circumstances, the rights and the dignity of his Government, which are openly injured; and if he did not call the attention of Mr. Madison to the disagreeable reflections which the French Government would have a right to make, if the silence of the local authorities respecting acts of this nature should be imitated by the Government of the United States.

The French Government certainly could not see, without a profound regret, that, after having given to the United States the most marked proofs of the desire to place the good understanding of the two nations upon the most immovable foundations, by abandoning national interests, which might have eventually produced collisions, individual interests should now be permitted to compromise this good understanding. Its regret would be still much greater if, when the dignity and the safety of France are openly injured in the United States, by their citizens, the American Government should preserve, respecting these violations, a silence, which would appear to offer an excuse, and even a sort of encouragement, to all the excesses which cupidity may attempt. Besides that, the peace of the two nations cannot but be seriously compromised by the proceedings of the

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individuals, and by the reprisals to which they must necessarily lead; this state of things would infallibly tend to diminish the amicable dispositions which the two Governments wish to cultivate.

No. 3.

NEW YORK, *Sept. 6, 1804.*

SIR: The sufferings of innocent individuals induce me to the liberty I now take of submitting the following statement to your consideration:

In the month of June last, I despatched the ship *Hopewell*, Preserved Sisson, master, and the brig *Rockland*, — Akens, master, with suitable cargoes, destined for Aux Cayes, in the Island of Hispaniola: the former armed for defence with twelve six-pound cannon and two twelve-pounders, with small arms, &c., a crew of thirty-five in number, besides passengers; the latter, with eight six-pounders, small arms, &c., and a crew of twenty in number, besides passengers. Both these vessels were regularly cleared at the custom-house of this district, and sailed on their intended voyage on the 17th of June. In the prosecution of which, they were met with and captured by a privateer belonging to individuals in the island of Guadaloupe, whither they were carried, and their crews put into close confinement. I beg leave to refer you to the document enclosed for the particulars of the situation in which those unfortunate men are placed; and have the honor to be, &c.,

GEO. BARNEWALL.

JAMES MADISON, Esq., &c. &c.

GUADALOUPE, POINT PETRE,

July 26, 1804.

SIR: No doubt, ere this, you have heard of the capture of the *Hopewell* and brig *Rockland*. Owing to S. W. and S. S. W. winds, was obliged to go to the eastward of Bermuda, in lat. 27 deg. 38 min., long. 61, 57 min., on the 30th of June, at 3 A. M. Saw a brig which appeared to be dogging us, and at daylight she bore down, on us, hoisted an English ensign, and fired a gun to leeward: we were then under all the sail we could set; but finding she came up with us very fast, we hoisted American colors, and fired a gun to leeward, and shortened sail. I hailed the *Rockland*, and desired Captain Akens to keep on our lee bow, and near us, as I wished to speak the privateer first, and know what he was, before we attempted anything. She was then on our weather quarter; the *Rockland* not keeping in her station, dropping more to leeward, and nearly on our lee quarter; the privateer was then almost within hail of us, but immediately up helm and run alongside the *Rockland*, and commenced firing under English colors, which was returned from the brig. The privateer being between us and the brig, prevented my firing until I got in a situation to fire clear of the *Rockland*, which was in less than a moment, when we commenced firing to the best advantage we could; the *Rockland* fired only one broadside and some musketry,

when she was boarded; they only left three men on board, sheered off, and gave us a broadside, and attempted to board us, but was repulsed by our quarter gun pikes and musketry; they then kept clear of our pikes, and played continually with all their men, with nothing but musketry. Our men seeing their shipmates falling, most of the landsmen quit their quarters: the privateer seeing this, attempted the second time to board us, by cutting our nettings, and overpowered us by numbers; was obliged to haul down our colors, and quit the deck, otherwise be cut in pieces; we had three killed, four badly wounded, and two slightly wounded; the first who fell was poor Mr. Bird; he was standing near me; he received one ball through his body, and one through his head, and never after spoke a word. I begged him some time before to go below, and prepare his papers: he said they were already prepared, and would not quit the deck; in consequence of which all his papers were found. It was not my intention to engage the privateer, unless I thought we were sure of getting clear; but the *Rockland* commencing so quick, I could not then avoid it; but even had we suffered them to board us, they would have made a prize of us; the passengers on board were sufficient to condemn us; upward of one hundred letters were found with them directed to different parts of St. Domingo, and, among the passengers, there were two noted generals who were well known by the Frenchmen; and among Mr. Bird's papers were found instructions from Mr. Lapierre pointing out the whole plan of the voyage. Many other letters were found with Mr. Bird's papers, all of which tended to condemn the ship, which they showed me at Point Petre when I was examined.

When they boarded us, nothing saved our lives but their thinking we were English, and asked us how we dare engage under American colors; and did not believe we were Americans even after we arrived. After the *Rockland* was boarded we engaged the privateer close on board for forty minutes. When the black General, a passenger, found we were captured, he ran below with a pistol, with an intention to blow the ship up, and with much difficulty we prevented it. He set the cartridges on fire in the cabin and steerage, which was in pouch tubs, and my laying the magazine scuttle over, saved the ship and our lives. When he found he could not blow the ship up, he put the pistol to his head, and blew his brains out. The privateer took out all the passengers, officers, and men, except myself, carpenter, two boys, and one of our men, badly wounded. The privateer continued with us until we arrived in this port, which was on the 17th July, and was immediately put altogether in a most miserable prison with nothing to eat but stinking beef and coarse bread, and very short even of that. They will not suffer me to see any Americans, nor have any communication with anybody. There is a schooner called the *Snake* in the Grass, bought in New York and fitted out at Salem with five guns taken and brought here a few days before me: one of the mates is allowed to go out at times,

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and this was the only opportunity I had to write. They say that orders have gone to America, that every vessel bound to St. Domingo, if taken, shall be treated as pirates. God only knows what they mean to do with us. I beg you will do all in your power to get our Government to claim us, otherwise I do not know what they may do: they seem to be inveterate against the Americans, and even told me every ship and captain's name that was armed from New York.

Captain Akens had his mate killed, and one man, and several wounded, himself wounded, and died at this place on the 22d instant.

The schooner Snake in the Grass was commanded by James Mansfield, who is also in prison, with all his men. The vessel will be condemned, although they did not fire a shot. As no protest can be made here, I thought it best to let the officers sign this letter with me. Several large privateers are getting ready to go down in the bite after the Americans. The privateer that took us was the brig Ferbriskey, Captain Antwan, with ten long French sixes, two twelve-pound carronades, one long eighteen-pounder, and one hundred and fifty men. The French seem to be very inveterate against the Americans, and insult us as they pass the prison. All that I can say more is to request you to do what you can with our Government, to claim us as Americans. I think the manner in which the French privateer engaged us, under English colors, will be a sufficient reason for them to claim us. All that I can say more is, that your ship and property were defended with spirit, until overpowered by numbers.

I am, sir, with respect, your most obedient servant,

P. SISSON.

MAHLON BENNET,

JAMES ROSS, jun.

GEORGE BARNEWALL, Esq.

N. B. You will please to excuse any fault in this letter, as I am so closely watched.

UNITED STATES OF AMERICA,
State of New York, ss:

I, William Popham, Notary Public, duly admitted and sworn, dwelling in the city of New York, and having power by commission, under the great seal of the State of New York, to attest deeds, wills, and other writings, and also to administer oaths, and grant certificates thereof, do hereby certify, declare, and make known unto all persons to whom these presents shall come, or may in any wise concern, that the foregoing is a just, true, and perfect copy of an original letter (whereof it purports to be a copy) this day handed to me by George Barnewall, of the city of New York, merchant, in order to have a notarial copy made thereof; I, the said notary, having carefully compared and examined the said copy with the said original letter, and found the same to agree therewith word for word and figure for figure; and I, the said notary, do hereby further certify and declare, that, upon the day of the date hereof, before me personally came and appeared Dominick Purcell, of the said city of New York, gen-

tleman, who being by me duly sworn, did solemnly depose and declare, that he was well acquainted with the handwritings and signatures of Preserved Sisson, the master, and Mahlon Bennet, the first mate, of the ship Hopewell, of this port, and that he verily believes the names "P. Sisson and Mahlon Bennet," set and subscribed to the said original letter, are of the respective handwritings and signatures of the said Preserved Sisson and Mahlon Bennet; and he further depose and sayeth, that James Ross, jr., who hath also signed the said original letter, sailed from this port in the capacity of second mate of the said ship Hopewell; and further sayeth not.

DOMINICK PURCELL.

Of all which, I, the said notary, do now make this public act, that the same may serve, and be of full force and value, as of right it shall appertain.

In testimony whereof, the said Dominick Purcell hath subscribed the foregoing deposition, and I, the said notary, have hereto subscribed my name and affixed my seal of office, at the city of New York, the twenty-first day of August, in the year of our Lord, one thousand eight hundred and four, and of the independence of the United States of America the twenty-ninth.

WILLIAM POPHAM,
Notary Public.

SPAIN.

[Communicated to Congress, December 9, 1805, and February 18, 1813.*]

*To the Senate and House
of Representatives of the United States:*

The depredations which had been committed on the commerce of the United States during a preceding war, by persons under the authority of Spain, are sufficiently known to all: these made it a duty to require from that Government indemnifications for our injured citizens. A convention was accordingly entered into between the Minister of the United States at Madrid, and the Minister of that Government for Foreign Affairs, by which it was agreed that spoiliations committed by Spanish subjects, and carried into ports of Spain, should be paid for by that nation; and that those committed by French subjects and carried into Spanish ports should remain for further discussion. Before this convention was returned to Spain with our ratification, the transfer of Louisiana by France to the United States took place; an event as unexpected as disagreeable to Spain. From that moment she seemed to change her conduct and disposition towards us. It was first manifested by her protest against the right of France to alienate Louisiana to us, which, how-

* Although these Messages are of different dates, the papers transmitted exhibit the posture of affairs with Spain at the date of the first Message, and, in many cases, were only duplicate copies of the same paper.

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ever, was soon retracted, and the right confirmed. Then high offence was manifested at the act of Congress establishing a collection district on the Mobile, although, by an authentic declaration, immediately made, it was expressly confined to our acknowledged limits, and she now refused to ratify the convention signed by her own Minister under the eye of his Sovereign, unless we would consent to alterations of its terms, which would have affected our claims against her for the spoiliations by French subjects carried into Spanish ports.

To obtain justice, as well as to restore friendship, I thought a special mission advisable; and accordingly appointed James Monroe Minister Extraordinary and Plenipotentiary, to Madrid, and, in conjunction with our Minister Resident there, to endeavor to procure a ratification of the former convention, and to come to an understanding with Spain as to the boundaries of Louisiana. It appeared at once that her policy was to reserve herself for events, and, in the mean time, to keep our differences in an undetermined state: this will be evident from the papers now communicated to you. After nearly five months of fruitless endeavor to bring them to some definite and satisfactory result, our Ministers ended the conferences without having been able to obtain indemnity for the spoiliations of any description, or any satisfaction as to the boundaries of Louisiana, other than a declaration that we had no rights eastward of the Iberville, and that our line to the west was one which would have left us but a string of land on that bank of the river Mississippi. Our injured citizens were thus left without any prospect of retribution from the wrong-doer; and, as to boundary, each party was to take its own course. That which they have chosen to pursue will appear from the documents now communicated. They authorize the inference, that it is their intention to advance on our possessions, until they shall be repressed by an opposing force. Considering that Congress alone is constitutionally invested with the power of changing our condition from peace to war, I have thought it my duty to await their authority for using force in any degree which could be avoided. I have barely instructed the officers stationed in the neighborhood of the aggressions, to protect our citizens from violence, to patrol within the borders actually delivered to us, and not to go out of them but when necessary to repel an inroad, or to rescue a citizen, or his property; and the Spanish officers remaining at New Orleans are required to depart without further delay. It ought to be noted here, that, since the late change in the state of affairs in Europe, Spain has ordered her cruisers and courts to respect our treaty with her.

The conduct of France, and the part she may take in the misunderstandings between the United States and Spain, are too important to be unconsidered. She was prompt and decided in her declarations that our demands on Spain for French spoiliations carried into Spanish ports, were included in the settlement between the United States and France. She took at once the ground,

that she acquired no right from Spain, and had meant to deliver us none to the eastward of Iberville; her silence as to the western boundary leaving us to infer her opinion might be against Spain in that quarter. Whatever direction she might mean to give to these differences, it does not appear that she has contemplated their proceeding to actual rupture, or that, at the date of our last advices from Paris, her Government had any suspicion of the hostile attitude Spain had taken here. On the contrary, we have reason to believe that she was disposed to effect a settlement, on a plan analogous to what our Ministers had proposed, and so comprehensive, as to remove, as far as possible, the grounds of future collision and controversy on the eastern as well as western side of the Mississippi.

The present crisis in Europe is favorable for pressing such a settlement, and not a moment should be lost in availing ourselves of it. Should it pass unimproved, our situation would become much more difficult; formal war is not necessary, it is not probable it will follow, but the protection of our citizens, the spirit and honor of our country, require that force should be interposed to a certain degree. It will probably contribute to advance the object of peace.

But the course to be pursued will require the command of means which it belongs to Congress exclusively to yield or to deny. To them I communicate every fact material for their information, and the documents necessary to enable them to judge for themselves. To their wisdom, then, I look for the course I am to pursue, and will pursue with sincere zeal that which they shall approve.

TH. JEFFERSON.

DECEMBER 6, 1805.

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No. 2.

DECEMBER 6, 1805.

SIR: In order to give to Congress the details necessary for their full information of the state of things between Spain and the United States, I send them the communication and documents now enclosed. Although stated to be confidential, that term is not meant to be extended to all the documents, the greater part of which are proper for the public eye: it is applied only to the Message itself, and to the letters from our own and foreign Ministers, which, if disclosed, might throw additional difficulties in the way of accommodation. These alone, therefore, are delivered to the Legislature in confidence that they will be kept secret.

TH. JEFFERSON.

The President of the Senate.

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No. 3.

To the Senate of the United States:

I transmit to the Senate a report of the Secretary of State, complying with the resolution of the 18th January, 1813.

JAMES MADISON.

FEBRUARY 18, 1813.

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No. 4.

DEPARTMENT OF STATE, Feb. 17, 1813.

The Secretary of State, to whom was referred the confidential resolution of the Senate of the 18th instant, has the honor, in compliance therewith, to submit to the President the following papers:

1st. Instructions given by the Secretary of State to Charles Pinckney, Esq., Minister Plenipotentiary of the United States at Madrid, under date of the 6th February, and 10th April, 1804; and to Robert R. Livingston, of the 31st January, 1804.

2d. The Correspondence between Charles Pinckney, Esq., and the Spanish Government relative to the ratification of the Convention of 1802.

3d. Correspondence between the Secretary of State and the Marquis de Casa Yrujo, on the same subject.

4th. Instructions given by the Secretary of State to Messrs. Monroe and Pinckney, under date of the 15th April, 8th July, 26th October, 1804; 4th May, and 23d May, 1805.

5th. A letter from Mr. Monroe to M. Talleyrand, of 8th November, 1804; and a letter from M. Talleyrand to General Armstrong, of 21st December, 1804, in reply thereto.

6th. The correspondence between Messrs. Monroe and Pinckney, and the Spanish Government.

These papers communicate all that passed between the dates specified in the resolution, on the subject-matter thereof; no negotiation was ever entered into with Spain, under the instructions to Messrs. Armstrong and Bowdoin, nor was there ever any negotiation with France, either for the cession of East Florida, or for indemnities for French seizures, and condemnations in the ports of Spain, during the late war with France.

All which is respectfully submitted:

JAMES MONROE.

I.—Instructions from the Secretary of State to Mr. Pinckney and to Mr. Livingston.

Mr. Madison, Secretary of State, to Mr. Pinckney, Minister to Spain.

DEPARTMENT OF STATE, July 29, 1803.

SIR: You will have learned, doubtless, from Paris, that a treaty has been signed there, by which New Orleans and the rest of Louisiana is conveyed to the United States. The Floridas are not included in the treaty, being, it appears, still held by Spain. The enclosed copy of a communication, from the Spanish Minister here, contains a refusal of His Catholic Majesty to alienate any part of his colonial possessions. A copy of the answer to it is also enclosed.

At the date of this refusal, it was probably unknown that the cession by France to the United States had been, or would be made. This consideration, with the kind of reasons given for the refusal, and the situation of Spain, resulting from the war between Great Britain and France, lead to a calculation that, at present, there may be less repugnance to our views. The letter, herewith addressed to Mr. Monroe, gives the instructions

under which the negotiations are to be pursued. Being for your use, as well as his, it is left unsealed, and in your cipher; a copy in his having been forwarded to Paris.

In case Mr. Monroe should not have arrived, but be expected at Madrid, you will forbear to enter into negotiations on this subject, unless they should be brought on by the Spanish Government, and the moment should be critical for securing the object on favorable terms. The maximum of price, contemplated by the President, will be found in the instructions. At this price the bargain cannot be a bad one. But, considering the motives which Spain ought now to feel for making the arrangements easy and satisfactory; the certainty that the Floridas must, at no distant period, find a way into our hands; and the tax on our finances, resulting from the purchase of Louisiana, which makes a further purchase immediately less convenient; it may be hoped, as it is to be wished, that the bargain will be considerably cheapened. Under such circumstances, it would not be proper to accede to the terms which, under others, might have been admissible.

In case Mr. Monroe should be obliged to decline or postpone his visit to Spain, I have requested him to give you his ideas on the expediency of your proceeding or not in the negotiation. The advantage given him by his opportunity of scanning the policy of Great Britain and France, in relation to Spain, and of estimating the course of the war, will render his opinion on that point worthy of your confidence.

You will observe, in the answer to the Marquis de Yrujo's communication, a merited animadversion on the motives assigned for the restoration of the deposit. The United States can never admit that this was of favor, not of right; nor receive as a favor what they demand as a right.

As the indemnifications claimed from Spain are to be incorporated in the overtures for the Floridas, it will be advisable to leave them, although within your ordinary functions, for the joint negotiations of yourself and Mr. Monroe. In these, as proceeding from an extraordinary mission, the subject can be pressed with greater force and more probable effect. Should Mr. Monroe, however, not be likely soon to join you, and there be a prospect of extending the convention, not accepted here, to the claims admitted in it, you will continue to urge them on the justice of the Spanish Government; and in terms, and a tone, that will make it sensible of the impolicy of disappointing the reasonable expectations of the United States.

I have the honor to be, &c.

JAMES MADISON.

CHARLES PINCKNEY, Esq.

Extract of a letter from the Secretary of State of the United States to Robert R. Livingston, then their Minister Plenipotentiary in France.

DEPARTMENT OF STATE, Jan. 31, 1804.

The convention with Spain, which was not agreed to at the last session of Congress, has been resumed and ratified during the present. The ob-

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jection to it was, that it did not provide, in sufficient extent, for repairing the injuries done to our commerce, particularly in omitting the case of captures and condemnations by French cruisers and Consuls, within Spanish responsibility. As the convention does not abandon the omitted cases, but merely leaves them for further negotiation, it was judged best, on the whole, not longer to deprive that class of our citizens, who are comprehended in the convention, of the benefit of its provisions. The claims of the others will be pursued with due attention; and may, perhaps, be advantageously brought into the negotiation with which Mr. Monroe and Mr. Pinckney will be jointly charged. Such of them as Spain refused to submit to arbitration, as proceeding from French citizens, and not from Spanish subjects, are clearly supported by strict justice, and by the soundest principles of public law. French citizens, within the jurisdiction of Spain, were, for the time, subjects of Spain. Spain had a right to their allegiance, and was responsible for their conduct. As well might she say that a murder or robbery committed by a Frenchman on an American, in the streets of Madrid, was to be punished or redressed by France alone, not by her, as pretend that the illegal proceedings of Frenchmen, within Spanish jurisdiction, in the case of spoiliations on our commerce, are to depend on France, not on her, for indemnification. Supposing France to be liable eventually, Spain is liable in the first resort, and can be relieved from it only by showing that she exerted all the reasonable means in her power for preventing and correcting the wrong, without being able to succeed in either. At first she seemed sensible of this. Her plea was, in substance, that circumstances did not permit her to control the conduct of French agents and citizens within her jurisdiction. This plea being not very honorable to her sovereignty, or sufficiently established by proof; and being not very consistent with the satisfaction which she may find it expedient to yield to other nations, particularly to Great Britain, whose commerce is, at this time, suffering like injuries from French cruisers and Consuls; it has given place to the plea that the erasure of the second article of our convention with France, in 1800, releases Spain as well as France; because France being liable, in justice, to Spain, for the indemnities paid by the latter to the United States, would indirectly be deprived of the benefit of that release to her. To this the reply is given by the remarks already made. The injury proceeded from Spain. To Spain we look for reparation. Her claim for reimbursement on France is a question between her and France. It may be just, or not just, according to circumstances unknown to the United States. Spain may have found, for anything we know, an equivalent for this use of her ports, and her permission in advantages yielded by, or expected from France. To this the fact may be added, that the indemnification has throughout been claimed from Spain and not from France; or, if from France, the application has been neither patronized, nor authorized by the Government of the United States. Applications

of this sort may have been made by individual sufferers: but, it is believed, that they have, in no instance, received the countenance of the American legation at Paris. It is maintained, however, on the part of Spain, that a resort in form has been had to the French Government, in such cases. Will you make the inquiry and communicate the result? It will not be amiss to know the truth, as it may the more effectually silence the sophistry of Spain. But, should the result justify the assertion on her side, it will not vary the merits of the question. The resort of individuals to the French Government could not be pretended to have that effect. If made under the voluntary auspices of an American Minister it might have been unknown to, or disapproved by the Government here. Nay, if made by order of the Government itself, it would not preclude a just resort to Spain, unless accompanied by a positive or clearly implied discharge of the latter from her responsibility.

"It has been thought proper to give you this view of the subject that it may guide the communications thereon, which it may be expedient for you, at any time, to hold with the French Government."

Extract of a letter from the Secretary of State to Chas. Pinckney, Esq., then Minister Plenipotentiary of the United States at Madrid.

DEPARTMENT OF STATE, Feb. 6, 1804.

The Senate having resumed at the present session the convention with Spain, postponed at the last, have thought proper to ratify it, and the President has completed the act on the part of the United States. The instrument is now returned to you with these sanctions, in order to be exchanged for the ratification of His Catholic Majesty. You will hasten this formality as much as possible, and forward the result to the Government here, that no time may be lost in procuring to our citizens the benefits stipulated to them. To favor despatch, as well as to guard against casualties, duplicates and even triplicates will be proper.

In concurring in this partial provision for the indemnities due from Spain, it is to be particularly understood that it proceeds from no other considerations than a wish to shorten the delay of relief to that portion of the claimants who are included in the provision, and a determination to avail the residue of the reserve, expressly made in behalf of their claims, by the act of the convention. When the decision of the Senate was postponed at the last session, it was justly hoped that, before the succeeding one, the Spanish Government would have yielded to the reasonableness and justice of giving to the provision the extent required by the United States; in which case, the arrangements would have been simplified, and a foundation laid at once for closing all controversies on the subject. The final refusal of Spain to concur in these views, has been thought to give a preference to the course now adopted.

None of the pleas urged by the Spanish Gov-

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ernment, can in the least invalidate the justice of the claims for injuries committed by French citizens or agents within her jurisdiction.

If His Catholic Majesty be sovereign in his own dominions, aliens within them are answerable to him for their conduct, and he, of course, is answerable for it to others. This is a principle founded too evidently in reason and usage to be controverted. As well might Spain say that a theft or robbery, committed in the streets of Madrid, by a Frenchman on an American, is to be redressed by France, and not by her, as pretend that redress is to be sought for spoiliations committed by cruisers from, or condemnations within, Spanish ports. Nor is there any room for the distinction between the injuries proceeding from the French cruisers and French consuls. With respect to the consuls, their acts were either authorized or not authorized by Spain; if authorized by Spain, Spain is answerable for giving them the authority; if not authorized by Spain, they could not be authorized at all; the law of nations giving them no such authority, and France having no right to give it; and being acts without authority, they are not to be regarded as consular acts, but as much the acts of private individuals as the cruises or any other irregularities committed or instituted by French citizens within the jurisdiction of Spain. To say that the consuls derived their authority from the sanction given by Spain to the authority derived from France, (without which sanction, positive, or permissive, it is clear that the authority of France, within the jurisdiction of Spain, would be a nullity,) is still to rest the condemnation by the consuls on the authority of Spain, and to leave her responsible for them.

Under every aspect, therefore, Spain is bound to do justice in this case to the citizens of the United States, unless she not only pleads a duress, suspending her free agency, and prostrating her national honor, but proves the reality of this duress; and not only proves this duress, but proves, moreover, first, that she did everything in her power to prevent the evil; next, that she did everything in her power to obtain reparation for it; and, lastly, that, in tolerating the evil, she did not deliberately and wilfully surrender the neutral rights under her protection to advantages, positive or negative, obtained or expected by herself or France.

The suggestion, that France was resorted to for redress was unfounded. It does not appear that any such resort was authorized by the Government of the United States, whilst the claims against Spain have been uniform and pressing; nor is it believed that any interpositions have proceeded from the American legation at Paris. Had, indeed, such interpositions taken place, they would, in no respect, lessen the obligations of Spain. Individuals may have made their applications to the French Government, but it will not be pretended that the merits of the question can be affected by that circumstance.

The plea on which it seems that the Spanish Government now principally relies is, the erasure

of the second article from our late convention with France, by which France was released from the indemnities due for spoiliations committed under her immediate responsibility to the United States. This plea did not appear in the early objections of Spain to our claims. It was an after thought, resulting from the insufficiency of every other plea, and is certainly as little valid as any other. The injuries for which indemnities are claimed from Spain, though committed by Frenchmen, took place under Spanish authority. Spain, therefore, is answerable for them; to her we have looked, and continue to look, for redress. If the injuries done to us by her resulted in any manner from injuries done to her by France, she may, if she pleases, resort to France, as we resort to her. But whether her resort to France would be just or unjust, is a question between her and France, not between either her and us, or us and France. We claim against her, not against France. In releasing France, therefore, we have not released her.

The claims, again, from which France was released, were admitted by France, and the release was for a valuable consideration in a corresponding release of the United States from certain claims on them. The claims we make on Spain were never admitted by France, nor made on France by the United States; they made, therefore, no part of the bargain with her, and could not be included in the release. The only supposition on which Spain could turn us over to France would be, that of her being in a state of absolute duress, of her being merely the staff by which the blow was given by France. But even on this supposition, the injuries done by France, through Spain, could not, by any fair interpretation, be confounded with the injuries released to France, by which could be meant such injuries only as proceeded from her own individual responsibility, and as were, in the ordinary course of things, chargeable on her.

The last plea, under which refuge has been sought by Spain against the justice of our claims, is, the opinion of four or five American lawyers, given on a case stated, without doubt, by some one of her own agents. An argument of this sort does not call for refutation, but for regret that the Spanish Government did not see how little such an appeal from the ordinary and dignified discussions of the two Governments, by their regular functionaries, to the authority of private opinions, and of private opinions so obtained, was consistent either with the respect it owed to itself, or with that which it owed to the Government of the United States; that it did not even reflect on the reply so obvious, that four or five private opinions, however respectable as such, could have no weight against the probability that other lawyers had been consulted, whose opinions were not quoted, because they were not the same; and that, if the Government here could descend to the experiment, little difficulty could be found in selecting more numerous authorities of the same kind, not only in the United States, but among the jurists of Spain.

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Extract.—The Secretary of State to Charles Pinckney, Esq.

DEPARTMENT OF STATE, April 10, 1804.

SIR: The footing on which your last communications with Mr. Cevallos left the subject of the South American claims of our citizens, requires little to be added to what has heretofore been said in relation to them. I shall observe only, that there is a difference between your statement and construction of the Spanish ordinances and those of Mr. Cevallos; on which I cannot undertake to decide, without a fuller view of the question than I have the means of taking. On the arrival of Mr. Monroe, he will join you in the discussion, and the provision due to our citizens may, perhaps, be incorporated with the principal negotiations which will then be undertaken. In the meantime, you will be under no restraint from taking advantage of any favorable change in the disposition of the Spanish Government, for obtaining justice from it. This is the more to be desired, as it will simplify the transaction, committed jointly to yourself and Mr. Monroe, and leave, applicable to other contested cases, any sum that may be stipulated by the United States in that transaction, and which will probably be inadequate to the aggregate of the cases.

According to information already received, many vessels, belonging to citizens of the United States, have suffered from irregularities in the West Indies, in which Spanish authorities have, in some way or other, participated, and for which, of course, redress will lie against the Spanish Government; and new cases are daily added. As soon as the requisite statements can be made of them, they will form a ground for claiming just reparation. In the meantime, you will represent, generally, to that Government, the illegal and unfriendly practice which exists, and the right which the United States have to expect from the justice of His Catholic Majesty, and his regard to the friendship and harmony of the two nations, immediate instructions to his officers in the West Indies which may put an end to the practice.

II.—*Correspondence between Mr. Pinckney and the Spanish Government, relative to the ratification of the Convention of 1803.*

Mr. Pinckney to Mr. Cevallos.

MADRID, January 11, 1804.

SIR: I had the honor lately to inform your Excellency of the ratification and exchange of ratifications of the treaty and convention, respecting the cession of Louisiana; I have now the honor to inform your Excellency, that I have since received another despatch from the Secretary of State, informing me that Congress have passed an act authorizing and enabling the President to take possession of and occupy the said Territory, as ceded by France to us; and have provided for the temporary government thereof, by means calculated to maintain and protect the inhabitants of Louisiana in the free enjoyment of their liberty, properties, and religion. They have also passed another law, for furnishing the means to pay the

sums which they have given to the French Republic for the same.

In consequence of this, the President of the United States has issued a joint commission to General Wilkinson, the General commanding the forces of the United States, and Governor Claiborne, of the Mississippi State, to receive from the Prefect of Louisiana, or person authorized, the territory in question, and to possess and occupy the same in the name of the United States.

I should have contented myself with barely making the official communication of these events, if the late communication of your Excellency and your letter did not impress me with a belief that there was something in the observations of your Excellency, and the apparent unwillingness of the Spanish Government, either to arrange our pre-existing differences and claims, or to cordially acquiesce in the cession of Louisiana, which required an answer, and such a one as should still go to prove the justice, the moderation, and the friendship of our Government for Spain.

As I do believe things are growing to a serious height between the two Governments, such as may, possibly, produce war; while we can, with honor, and with something like equal and honorable terms, and before any event occurs, or at least before we know, officially, of any, which may prevent all discussion, and drive things to extremities, I am to request the serious and early attention of you Excellency to the following observations. There are three subjects of discussion between the Spanish and American Governments:

1. The actual cession of Louisiana;
2. The proposed cession of Florida;
3. The claims of American citizens.

As to the first, it may be said, on the part of the United States, that they long ago foresaw the difficulties which would arise from any other nation but themselves possessing the mouth of the Mississippi, and endeavored, by every friendly means, to do them away. They made various propositions to Spain, which were rejected; and, in the interim, the Spanish officer at New Orleans deprived the citizens of the United States of the deposit stipulated for in the Treaty of 1795; this roused the feelings of the whole nation, and their Government, true to their professions of respect and friendship for Spain, and, at the same time, convinced of the necessity of applying some effectual remedy to the evil, sent to Europe an extraordinary mission to treat on the subject. At this time, the Spanish Government officially announced that they had ceded Louisiana to France, and that we must direct ourselves to that Government for any acquisition of territory which might be convenient to us. Our Ministers at Paris made this acquisition; hence accrues to us a right founded on justice.

On the part of Spain, it is said, that Louisiana was ceded to France, under a promise from that Power not to part with it. I presume that the French Government will be able to show that this promise could not be supposed to bind them under the circumstances in which they found themselves last spring; but be this as it may, the

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promise was neither an equitable nor a legal obligation on the United States, because it had not been made known to them. Repeatedly and earnestly did I ask your Excellency upon what terms Louisiana was ceded to France; for twelve months I could get no answer; at last I was told by your Excellency, on the 31st March, that Louisiana was ceded to France, "avec la même étendue qu'elle a actuellement entre les mains de l'Espagne, et qu'elle avoit lorsque la France la possédoit, et telle qu'elle doit être après les traités passés subséquemment entre l'Espagne et d'autres Etats;" and as no mention was made of any restriction, when it was known that we wished to purchase, we had a right to suppose that there was none. But, even if there could be any doubt, it is cleared up by your Excellency's letter to me on the 4th of May; for your Excellency there tells me, in express terms, that my Government "podrá dirigirse al Gobierno Francés para negociar la adquisición de territorios (en Luisiana) que convengan á su interes."

From these letters, which were remitted to our Ministers Extraordinary at Paris, and to our Government, it is clear the United States were in possession of official intelligence that the country was ceded; nor did the least hint drop from Spain of any secret article. She had sold, or exchanged, and conveyed the territory to France; it was a fact known to all Europe, and officially announced to us; it was equally known that we wished that country, and the reasons of our doing so, are such as the world must approve. We have fairly bought and furnished the means of paying for it; and if, after all this, Spain should refuse her acquiescence, and, to possess it, war should be the consequence, I leave it to the enlightened mind of your Excellency to judge who are in the right, and what must be the opinion of every impartial nation as to the procedure. But why should Spain refuse her acquiescence? She has shown already that she did not consider the keeping of Louisiana as indispensable or necessary to her; it was originally a French colony, and never came into the possession of Spain until 1763; it therefore, cannot claim that sort of affection which old countries sometimes entertain for colonies originally established by themselves, and considered as parts of their family. Nor can Spain give that as a reason, as she has always seemed to consider Louisiana and Florida as temporary possessions little valuable to her; nor has she ever hesitated to part with them, when she found it her interest to do so; and, if she has no objection to part with them to other Powers, why should she not wish to see them in our hands? Is she more jealous of us than of others? Have we more power, more ambition, or are we more capable of doing her injury, than Great Britain or France? If she thinks so, she mistakes most egregiously the character of our people, the nature of our Government, or the true interests of a country devoted only to peaceful and honorable pursuits. Does she suppose we have less affection for Spain than the Governments I have mentioned, which have each, in their turn, possessed Florida and

Louisiana? This question is at once answered, by saying, that, while we benefit, we cannot rival or interfere with each other; that our commerce is extensive, and mutually advantageous; and that these are the situations which are generally the parents of a sincere and lasting affection between nations; there is but one possible mode of our differing or interfering, and that is by the collision of unsettled boundaries. Let us now forever remove the possibility of this collision. We offer to come forward honorably and openly on this subject; I am hopeful Spain will do the same, and that I shall soon receive such propositions from your Excellency as I shall be authorized to accept.

As to the second subject of discussion, it has been urged, on the part of the United States, that Florida was desirable to them from its local situation; that, by getting it, they should avoid the necessity of submitting to similar evils to those they had suffered in Louisiana; that this country was of little or no use to Spain; that it cost her much money to maintain it; that it greatly increased the probability of her being engaged in war, and lessened her means of supporting it; and that the Spanish capital and industry employed in the trade of that country might be much more advantageously employed in carrying on the commerce of the more fertile provinces of South America. These reasons, it was supposed, would have much weight; yet, the Government of the United States were willing to pay a fair price for it. They had turned their attention to the subject, and saw that misunderstandings must sooner or later arise, and they proposed, with honest intentions, the means they thought most likely to prevent it.

On the part of Spain it is said, that, the system adopted by His Majesty, not to part with any portion of his dominions, prevents him from acceding to the wishes of the American Government; and that, moreover, he is bound, by treaties, not to dismember his American empire. It is not recollected that any other reason is assigned, and to these it may be answered—

1st. That it is unwise to adhere to any general system contrary to the dictates of sound policy; and

2d. That no opposition will or can, with propriety, be made by any foreign Power, to the cession of Florida to the United States; for that country has changed masters so often since the Treaty of Utrecht, that it, at least, is exempted from the general restriction of that treaty; nor, until lately, has been much value annexed to it by Spain. Other arguments might be adduced; but, as it is known that neither the interest of France or England will be injured by this cession, there are reasonable grounds to suppose that neither of them will object to it; and, if they do not, it is presumed that no other Power will. These reasons, then, lose their strength, and leave the naked question of expediency. This, in fact, is the only point for His Majesty's Ministers to inquire into; and if they, in their wisdom, determine that it would be for the interest of Spain to part with this province, no

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foreign nation would have the unkindness to oppose it, nor should any general system be suffered to do it. The reasons before mentioned, and which were detailed on a former occasion, prove the actual value of this country to Spain is small; and if it is supposed that it acts as a protection or frontier to any other of her dominions, it is a mistake; it may be the means of bringing about a rupture, which might endanger the others, but it can never be the means of protecting them. It may, and but too probably will, happen, that the seeds of dissension sown in that country will spread to others, where dissension, but for this, would never have been known. If it is believed (and it is hoped it will be) that ambition does not direct the views of the American Government, then no suspicion can be entertained of the sincerity of their declarations, and its proper weight will, of course, be given to their opinions. But even if it was supposed for a moment, that they were guided by ambition, would it not be wise and prudent in Spain to deprive them of all pretext for the further gratification of this passion, by giving up to them, upon reasonable terms, (and upon no other is it asked,) a province which is of no use to her, and one which must fall into the hands of her neighbor if she chooses to attack it? This is an idea but little connected with the real question; for the conduct of the Government of the United States leaves no room to suppose that they are guided by ambition. The wish to purchase a barren and almost uninhabited country could not arise from such a passion; it has its source in the wisdom and prudence of those who view this purchase as the best and readiest means of settling present disputes, and of establishing, upon a solid basis, future peace and friendship between Spain and the United States.

On the 3d topic, viz. the claims of American citizens, little remains to be said, for the subject has been discussed in all its various forms; and the result is, a difference of opinion between the two Governments. One or the other must be wrong; and, as it is presumed that it is equally the interest and the wish of both that the difference should be amicably arranged, it becomes expedient to refer it to the same impartial tribunal, as the only means of accomplishing this desirable end. To this the Government of the United States will agree, although they themselves have paid those who had similar claims upon them without a reference, and might, therefore, with some degree of propriety, insist upon receiving payment in the same way.

The importance of the foregoing subjects call for the serious attention of both Governments, and it is believed that, if they are properly investigated, no material difference of opinion can exist. Peace, harmony, and friendship, it is presumed, are equally the interest and the object of both, and justice and friendly acts are the only means by which to obtain and perpetuate them. Spain certainly ought not to feel a disposition to treat us unjustly or unkindly, and we ask nothing but what we are willing to pay for, or have a right to insist on.

Your Excellency well knows how much and how anxiously I have always desired to accommo-

date every difference between the two countries; fearing that these are increasing, and that things are rushing to a point from which it will be difficult to recede, in the amicable and honorable manner in which an accommodation may yet take place, as the friend of peace and harmony of the two countries, I seize the present moment still to offer to receive any amicable and reasonable propositions that may have a tendency to produce the arrangements and cession which we have so long and ardently wished.

Having reason to suppose your Excellency has received, by a packet, the same late and important intelligence I have of the critical state of things between the two countries, you will at once perceive the reason of my renewing my application at this time, and of my so earnestly requesting an answer. Your Excellency will, I am sure, be convinced that it flows from that ardent desire for the peace and friendship of the two countries, which has always governed the numerous endeavors I have made to preserve them, and which have been such as I trust will impress your Excellency with the conviction of their having been open, sincere, and always with the best intentions.

I have the honor to be, &c.

CHARLES PINCKNEY.

DON PEDRO CEVALLOS,
First Secretary of State, &c.

Mr. Pinckney to Mr. Cevallos.

MADRID, June 1, 1804.

SIR: Since I had the honor to see your Excellency, I have received your letter (31st May) on the subject of an act of Congress, passed by that body, relative to the collection of duties in a district near the Mobile, which you say is a violation of the territory and sovereignty of His Majesty, and which you request me to transmit to my Government. It being their practice to send all the acts of the session at the end of it, there has not yet been time for me to receive these acts, nor have I any information or instructions relative to this particular business; all, therefore, I can do at present is to comply with your request, and transmit your letter by the first safe conveyance. Permit me, on this subject, to remind your Excellency, that, on the first intelligence being received of the cession of Louisiana, I communicated verbally to your Excellency and the Prince of Peace the contents of an official letter I had received from Mr. Livingston and Mr. Monroe, informing me that they considered a great part of West Florida, as so called by the English, to be included. Such letter could not have been written to me officially by them, without their having been so informed by the French Plenipotentiary and Government. The price paid is a proof of the territory being considered as extremely extensive, and if, as must most probably be the case, these were the bounds detailed by the French, it becomes undoubtedly a question between the French and Spanish Governments, and our own; and for this reason, I shall immediately send a copy of your letter to me to Mr. Livingston, our Minister at

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Paris, for his information and that of the French Government. It not being the interest of either France, Spain, or the United States to differ about this or any other questions, I am sure that a little examination and moderation will soon accommodate it. Apprehending, however, that your Excellency may, from the tenor of your letter to me, make this a reason for not ratifying the convention, or of adding such clauses to it as may defeat or delay its ratification, and depending very much upon your Excellency's friendship for the United States, and strong sense of the great importance it is to both our countries to be on the most cordial and friendly terms, I again take the liberty of recommending to your Excellency to have the convention ratified as it is, and without addition: this will be to the United States so strong a demonstration of the sincere friendship of His Majesty, that I am sure it will be attended with the best effects; whereas, should it now be refused or delayed, or clogged with additions, it will serve to increase the irritation and animosity of the two countries, and only widen a breach which may now easily be closed.

The great point for the consideration of our two nations, is simply this: Is it the interest of both to be at peace and friendship with each other? or can a slip of territory, nearly barren, or the refusal of the ratifications of the convention, be an equivalent for the expense and consequences of embroiling two nations which ought so strongly and affectionately to be united? Your Excellency, I know, thinks with me on this subject, that it is better to conciliate than irritate. Let, therefore, the different questions between our Governments be kept separate. On the subject of the claims and conventions for their arbitration, we have long since agreed to suffer that to be ratified as it is. This will be a strong proof to our Government that Spain wishes peace and friendship, and relies confidently on the well known good faith, honor, and moderation of the United States, for an amicable and just arrangement of the limits. On this subject a new negotiation can take place; it will then be the negotiation of neighbors having extensive concerns with each other, and among whom questions must sometimes arise; but let them be the questions not only of neighbors, but of friends, and unattended by any circumstances to irritate. Do not show the United States that you have no confidence either in their honor or justice—qualities on which they value themselves more than on power or wealth; but show to them that Spain, having the most perfect confidence in both, will rigidly and honorably adhere to what she has promised, and has no doubt the United States will do the same. This is the conduct I wish your Excellency to pursue, and I think I know the United States sufficiently to be convinced they will meet it with sincerity and cordiality.

Your Excellency sees by this letter the strong reliance I have on your Excellency's being, upon all occasions, the promoter of the peace and friendship of the two countries; and on this confidence I have the honor to subscribe myself

Your Excellency's most obedient and very humble servant,
CHAS. PINCKNEY.

DON PEDRO CEVALLOS,

First Secretary of State, &c.

Mr. Pinckney to Mr. Cevallos.

MADRID, June 22, 1804.

SIR: Believing it not to be agreeable to your Excellency, I probably should not have again troubled you either with personal or written applications on the subject of the exchange of ratifications of the convention, after having done all I could to persuade your Excellency of the policy and propriety of so doing. I should have contented myself with having done my duty, and in requesting and urging upon you the necessity of an early and definitive answer to send to my Government; transmitting which, I should then have left to them to decide, as the rights and interests of our citizens, and the sacred honor and character of our nation, may require. I have, however, just received accounts of such a nature, as render it necessary or proper I should make one appeal more to your Excellency's love of justice, and to your wish to preserve the harmony of the two countries; and, should this fail, I will then give up the idea of our remaining long in friendship and peace, and consider it as almost an impossible thing. I think your Excellency, in reading this letter, and recollecting circumstances, must view it in the same light, and will at least appreciate the motives which have given rise to it. Beassured that nothing but the pressing importance of the subject, and the difficulty of amicably receding from the point, to which the refusal or delay to ratify as it now is will bring us, would induce me to do so.

To show your Excellency that this opinion is too well founded, we have nothing to do but to go back and examine the conduct of Spain for six years, and we shall find that, during that time, there has been such a series of treatment to the vessels, cargoes, and in many instances persons of our citizens, as no man could believe, who has not an opportunity to examine the archives of our mission to this Court. The individual sufferings have been incredible, and the property lost of immense value. There is scarcely a part or a port of His Catholic Majesty's dominions in Europe and America, that has not been the scene and witness of their sufferings: Sufferings, such as I believe no people ever before endured from a nation to whose coasts they went under the solemn protection of treaties, the laws of nations, and, in many instances, express royal orders or permissions from the King. Nor was the unfriendly treatment of Spain confined only to the acts of her own subjects while we were in difference with France; contrary to the treaty and every principle of the law of nations, she permitted the French cruisers to carry in hundreds of our vessels, and proceed to their condemnation and sale in Spanish ports. If your Excellency will only throw your eye over the vast and melancholy pile of reclamations on these subjects now in your office, I have no doubt you will readily confess that there perhaps never existed

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such a collection of wrongs, sufferings, and damages, permitted by one nation toward another, with which she professed to be in peace and friendship. I will venture to say that it is such as no nation, having the same power to assert their rights and protect their citizens as we have, would have so long suffered without some kind of redress.

And yet, under all these accumulated injuries and sufferings of our citizens, under the breach of solemn treaties, of the laws of nations, and in many instances, violations of the honor of our flag, what has been the conduct of the United States? Always mild and moderate, in every step of these oppressions and injuries, we have applied for redress in the most respectful terms; we have relied on the justice and magnanimity of His Majesty and his Government for nearly eight years, until our citizens who were concerned were nearly all ruined, such as have been for years personally attending to their claims, exhausted in their resources and fatigued with the useless attendance and absence from their families, have nearly all returned to their homes, abandoning to their Government their rights and claims, and are now incessantly applying to her to see them redressed. Such too, has been the serious and formal appeal of the great commercial cities on this occasion, so solemnly have they pressed it, that it has now become my duty to apply in the most urgent manner for a definite answer, His Majesty will ratify the convention as it was made or not? considering any alteration at this time as amounting to a refusal. On His Majesty's love of justice alone I rely for such an answer as will be agreeable to our Government. I entreat your Excellency to peruse some of the letters I have written to you on this subject. In these, I intimated to your Excellency the astonishment of the people of the United States at the apparent determination of Spain to consider them as enemies. Although many of their acts from 1796 to 1802 were oppressive and unfriendly, our citizens were hopeful they were occasioned by the war, and that at a proper time they would be redressed; they still, therefore, continued to view the friendship of the two nations as a certain thing, because they were neighbors; their commerce was extensive and mutually valuable; and it was impossible for them to be rivals. These generally being the solid foundations of friendship between Governments, our citizens had a well founded right to expect a firm and increasing one with the subjects of Spain. It was, therefore, with great surprise they viewed their losses and sufferings, the neglect of their claims, and their general treatment for the last six or eight years. Your Excellency will be astonished when I inform you that, on an accurate survey by persons who have examined them, not one case of seizure or damages in thirty has been redressed by Spain. I am sure that, out of the applications made on other subjects, the proportion of refusals has been as great. It has now become almost a regular thing for us to ask and to receive refusals to every application. These, added to the impression made on our citizens by the conduct of Spain as it respected Louisiana, have led to the opinion that Spain really has no

wish to remain long on friendly terms with us; or else why did she so quietly consent to restore Louisiana to France, and appear so content that the French should have it, and the moment she found it was to come to the United States, show such displeasure, and do everything in her power to prevent it? There can be but one answer, which is, that Spain considered Louisiana, while in the hands of France, as in the hands of her friends, and as about to be delivered to those whom she did not view as such. I can assure your Excellency that the whole of our situation and concerns, taken together, have led to a point sufficiently important for your Excellency's interference, because with difficulty I shall think your Excellency is not a friend to the United States, or that you wish to see any serious difference with us. At the same time, I do believe that on the present moment it depends to prevent these differences; for I am sure, if this convention is returned without being ratified as it is made, and ratified by our Government, that it will, perhaps, afterwards be too late for us to benefit by your Excellency's friendship and interference. I wish to speak with candor and friendship to your Excellency, because I well know the temper and disposition of our country and its Government, and the manner in which they have received the losses and injuries they have sustained from Spain for the last six or eight years. I am certain they will consider the refusal to ratify, or to give an answer, or the throwing of obstructions in the way so as to postpone it, as such evidence of hostility on the part of Spain as to put an end to all further amicable discussion.

The questions of our claims on Spain, and the convention to arbitrate them, are of an old date; they existed long before any question respecting Louisiana arose. In point of priority, they ought to be the first attended to and settled. It is for that purpose, therefore, I have so earnestly solicited your Excellency to use your powerful and well merited influence to have the convention ratified as it is, as that will open the way to the peaceable and friendly arrangement of the other question respecting the limits of Louisiana—a question totally separate and distinct, and which, having originated from our purchase from France, becomes a question which France must arrange between Spain and us; she is bound in honor and justice, no less than in interest, to do so. For this purpose, I have officially applied to the French Ambassador here, and have sent a copy of your letter to Paris, to be laid before the French Government. But I again entreat your Excellency not to let this be given as a reason for refusing to ratify the convention. It is because I believe that this will be the sole mode of amicably arranging all our other differences, that I so earnestly press it upon your Excellency, and because I also believe that, in the present state of things, the refusal or delay to answer will be the means of putting a close to all further amicable discussion.

With sentiments of the most profound respect, I have the honor to be, &c.,

CHARLES PINCKNEY.

DON PEDRO CEVALLOS.

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Mr. Cevallos to Mr. Pinckney.

MADRID, *July 2, 1804.*

SIR: I have received your letter of the 22d ultimo, in which you have thought proper again to urge the immediate ratification of the convention concluded on the 11th August, 1802, for indemnification of the losses, damages, and injuries sustained during the last war, in consequence of the excesses committed by individuals of both nations against the law of nations or the existing treaty. In answer, I can do no less than begin by stating to you that it appears extraordinary enough that you should consider any delay in the ratification of said convention, on the part of the Spanish Government, as a wrong done to your Government, when that of the United States had taken up almost two years in the examination before the ratification on her part; during which time, if any injuries have resulted to the interested, either Spanish or Americans, they are certainly not to be attributed to the Government of Spain. On her part, there always has existed the greatest desire to terminate, in a friendly manner, the question of indemnities, which are the object of the said convention; and His Majesty is disposed to ratify it, but under certain limitations or conditions, which will in no wise alter the material part of the convention, and which cannot be displeasing to the United States, since they emanate from the sacred principles of the justice, peace, and friendship, of the Governments on which it is founded.

The first of the said conditions is, that a time should be designated within which notice may be given to the subjects of His Majesty, who have reclamations to make to the Commissioners who are to be appointed, and to enable them to prepare the documents necessary for establishing their claims. The reason of this condition is very obvious, and its necessity proceeds from the slowness of the American Government in ratifying the convention, for it is evident that the reclamations of the Spaniards and Americans respectively cannot be made, unless each Government should notify the persons respectively interested to bring forward their demands; and the Spanish Government has not been able, nor ought it to have circulated such notices, being in doubt whether the American Government would or would not ratify the convention—a doubt which, in the session before the last of Congress, had increased to such a degree, as almost to make it evident that it would not be ratified; the general report being that the Senate of the United States had rejected it, which prevented the anticipation of any notice for the government of the Spaniards interested.

The second limitation or condition, founded on the most rigorous justice, is, that the sixth article of the said convention, which relates to the injuries done by French cruisers to American vessels, on the coast and in the harbors of Spain, should be suppressed. This article was inserted, because it was made a question whether Spain was or was not responsible for the said injuries and damages. You sustained the affirmative, and I the

negative, with arguments which I have not seen combated, except by actions which do not invalidate them. Subsequently, in my letters under date of the 23d August and 5th October last, to which I refer, I proved to you, in the most solid manner, supported by the opinions of the most eminent jurists in the United States, that, according to the convention concluded between France and the United States the 8th Vendemiaire, year 9, it could no longer be doubted that the United States had not the smallest right to exact indemnities from the Government of Spain for the injuries done by the French privateers on her coasts and in her harbors. To these incontrovertible reasons may be added that which results from the ninth article of the Treaty of 30th April, 1803, between the United States and France, relative to the cession of Louisiana; from which article, it evidently results that the French have satisfied the Americans for the injuries in question. There is no reason, then, why there should be retained in the convention which is to be ratified an article by which the United States reserve a right which they certainly have not, inasmuch as they have already received competent satisfaction from France. Under these circumstances, the suppression of the beforementioned article takes nothing from the essence of the convention; nor, in reality, can it be called a suppression which removes an article that has become notoriously and absolutely null from its own nature.

The third condition, entirely conformable to the pacific desires of the United States, is that which requires the revocation of the part of the act of the Congress of the said States, approved on the 24th February last, which has manifestly violated the rights of the sovereignty of His Majesty, by empowering the President to exercise authority and establishing custom-houses within a territory which belongs to the Crown of Spain. His Majesty being, as he is, persuaded, that through a mistake only could there have been introduced into the said act the expressions which assail the rights of his sovereignty, does not doubt that the United States will give, in relation to the said act, those explanations which may be most conformable to the justice he claims, and the most conciliating and respectful to the rights of his Crown.

Under these three conditions, His Majesty is disposed to ratify the convention of the 11th August, 1802; conditions which, as I said before, do not alter either the nature or the essence of it; for the first of them is nothing more than that a certain time should be allowed for His Majesty's subjects to receive notice that the convention was agreed on, and that he was prepared to support their claims; the second relates only to the suppression of an article which is null in itself; and the third emanates from the necessity of preserving that respect which Sovereigns reciprocally owe to each other.

Besides what relates to the ratification of the convention of the 11th August, you go on in your beforementioned note to accumulate complaints which, although they have no connexion with the

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present affair, I have not been able to pass unnoticed. You say that Spain having opposed herself to the alienation of Louisiana, proves little attachment or friendship on our part towards the United States; but if you had made the proper use of your logic and policy, (*politica*,) you would have drawn from this action, the certainty of which I do not dispute, very different conclusions. It is not uncommon that the Governments, the most united by system and by interest, suffer discordances arising from the vicinity of their territories; nor is it uncommon that those which know the importance of peace, and the facilities there unfortunately are by which it may be disturbed, should avoid an approximation of their territories. The views of Spain have been sound and political, and decently manifested; and if you had drawn your deductions from this view of the subject, you would have honored not less the talents than the just and friendly intentions of the King my master.

As to the rest, it does not appear to be in conformity to a conciliating spirit, which is that which you say animates you, to recapitulate old complaints for wrongs which Spain did not commit, and complaints for wrongs which are completely done away; France having given satisfaction for the damages occasioned by them.

I renew to you the testimonies of my constant esteem and consideration, and pray God to preserve your life many years.

PEDRO CEVALLOS.

Mr. Pinckney to Mr. Cevallos.

MADRID, *July 5, 1804.*

SIR: I shall proceed without delay to give your Excellency that decisive answer to yours of the 2d, and to take those definitive measures which my instructions and duty now make necessary; but before I do so, and in order to be correct, I wish your Excellency to say whether I am to understand your letter in this sense; that if the second condition, which respects the suppression of the claims for French spoliations, within the Spanish territory, and the third, the repeal of the law passed by Congress in February, are not agreed to, His Majesty will not ratify the convention. I request your Excellency merely to answer me this question; and if you answer me affirmatively, that is, that His Majesty will not ratify without those conditions, then to return me the ratifications and papers prepared and sent you some time since to Aranjuez.

I wish to have your Excellency's answer as quickly as possible, as on Tuesday I send a courier with circular letters to all our Consuls in the ports of Spain, stating to them the critical situation of things between Spain and the United States, the probability of a speedy and serious misunderstanding, and directing them to give notice thereof to all our citizens, advising them so to arrange and prepare their affairs as to be able to move off within the time limited by the treaty, should things end as I now expect. I am also preparing the same information for the com-

mander of our squadron in the Mediterranean, for his own notice and government, and that of all the American merchant vessels he may meet.

I confess, after the style of your Excellency's letter of the 31st May, on the subject of the late law of Congress, and the manner in which you annex to the ratification of a convention you yourself had signed, the humiliating conditions of our Government previously suppressing a claim of great magnitude, and which they consider as a point of national honor, and also of repealing an act lately passed with all the deliberation and solemnities prescribed by our Constitution, I see little hope of an amicable accommodation, particularly when I tell you that, in my two last despatches, lately received, I am charged by my Government to repeat to your Excellency, that not one shilling of the property claimed by the citizens of the United States from Spain for French spoliations, within the ports and territories, or on the coasts of Spain, has ever been relinquished to, or paid, or provided for, by France, in any mode, or even claimed from her; her provisions having been all for other claims arising elsewhere, and totally distinct from these; and further, that the United States are determined, at every risk, never to abandon this claim.

I earnestly repeat my request to have your Excellency's answer as soon as possible; and am, with much respect, your Excellency's obedient and very humble servant,

CHARLES PINCKNEY.

DON PEDRO CEVALLOS.

First Secretary of State, &c.

Mr. Cevallos to Mr. Pinckney.

JULY 8, 1805.

SIR: I have received your letter of the 5th instant, in answer to mine of the 2d, respecting the ratification of the convention concluded on the 11th August, 1802, and having given an account to His Majesty of the terms in which it was conceived, it could not but appear to him little conformable to the friendly relations between the two Governments, which you have it in charge to promote on the part of the United States, and which His Majesty takes every occasion on his part to encourage.

In the midst of a discussion which is itself a proof of the sincerity and real disposition with which it is wished to terminate the question of reclamations which are the object of the said convention, when I presented to you the motives there were for desiring to add in the ratification two or three circumstances which do not alter the substance of the convention, nor take anything from its object, it is not possible to comprehend the motive for your breaking out in the decisions, not to say threats, contained in your said letter, nor why you should proceed, as you say you will, to instruct the Consuls and commanders of the vessels of your nation to give notice of the critical situation of affairs between Spain and the United States, with an anticipation certainly not called for by the spirit of conciliation

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which you say animates you. It is not easy to conceive how your instructions can authorize you to proceed to these extremes, which are incompatible with the present state of a negotiation hitherto conducted in terms the most conciliating. If, in the year 1803, during the session of Congress, when it was notorious that the Senate of the United States had suspended the ratification of the convention which now occupies us, the Minister of His Majesty should have proceeded in the manner you have now done, what opinion would the Government of the United States have formed? They ought to have believed, and they surely would have believed, that the Minister of His Majesty had exceeded his instructions, and that his Government could not have authorized a proceeding so extraordinary. Almost two years the Government of the United States deliberated whether they ought, or ought not, to ratify the convention, and you pretend to find it extraordinary, and not only extraordinary but disrespectful to the United States, that the Government of Spain should manifest the difficulties which occur, supporting itself on the principles of the most rigorous justice, and promising itself that the American Government would do no less than to take them into consideration. In the meantime, you, without entering into an examination of them, without transmitting them to your Government, consider them as a sufficient reason for terminating all discussion respecting the ratification, and to designate Monday as a time for a final answer; to be conceived in the precise terms, yes or no; as if such a peremptory answer could be demanded on controverted points, and respecting some of which I have not yet had the honor of seeing a single reply from you. The King cannot persuade himself that such language is conformable to the moderation which he appreciates in the American Government.

The peace of two nations, whose reciprocal interests require a good understanding, is an object too important to be committed so lightly; and it is not to be believed that the Government of the United States will think differently, who, without doubt, have not forgotten the repeated proofs of friendship which the Government of Spain has given them from the commencement of their independence, that it distrusts the integrity of a Government which it has so often found ready to hear with impartiality, and to decide with justice and with generosity, on all kinds of reclamations.

The convention, whose ratification now occupies us, originated in the desire of both Governments to terminate speedily the question of the claims of individuals of both nations, for the reciprocal injuries which are mentioned in it. These claims always could have been, and can now, by the nature of them, be brought forward in the corresponding tribunals of each country, respectively, and be decided according to the law of nations and the existing treaties, as being the law of both countries; but it was wished, by means of the convention, to give the greater facility and promptitude, by forming a commission which should decide upon them in the manner therein stated. After

the conclusion of the convention, which, however, left both Governments at liberty to ratify it or not, and, consequently, although an effort should be made on the part of one of them to suspend the ratification, it could not give place to well founded complaints on the part of the other, on the ground that it prevented their subjects from establishing their claims, because a recourse was always to be had to the tribunals, which was what was rigorously due to them, and the prevention of which could alone give cause for such complaints. But leaving this apart, as it is not the point in question, let us examine what are the motives which could have given rise to your proceedings: having seen my letter of the 3d instant, none other is perceived but what arises from the second and third limitations under which I told you His Majesty was disposed immediately to ratify the convention. But if you examine them as they ought to be examined, you will see that the suppression of the sixth article does not alter the essence of the convention, since, as that article neither grants nor denies the right which may belong to the Americans, by reason of the injuries occasioned on the coasts, and in the ports of Spain, by French privateers, but leaves it such as it is, it is clear, that by its insertion in the convention, that right does not require greater force than it has itself, if it has any. We have discussed this right both before and since the formation of the convention. I have demonstrated to you that such a right does not exist, by arguments which I have not yet seen combated. I have shown you that if there had been any, it ceased to exist after the convention between France and the United States, concluded on the — Vendemiaire, 9th year; France having giving satisfaction for it, not by paying money as you seemed to suppose I had said, when you replied to me that the United States had not received a cent from France on account of these injuries, but by way of compensation and of conciliation, which is as legitimate a mode of dissolving obligations as payment itself. I have sent you the opinions of the most eminent jurists of the United States, conforming entirely to my mode of thinking, I have told you of the positive answer of the Ambassador of France, (Bonaparte,) that satisfaction was given for the injuries for which the United claimed compensation from Spain; and my last letter of the 5th of October, in which I stated all this to you, has had no reply or answer. There is then a well founded reason for believing that the American Government is persuaded that such a right does not belong to it, and it is not proper to leave in a treaty which is to be ratified clauses relative to rights, satisfied or renounced, especially when, by their insertion in a treaty or convention, they do not acquire, as I have said to you before, either force or validity.

The second condition, which you consider indecorous and humiliating for the United States, appears to me to be quite the contrary. His Majesty is persuaded that the intention of Congress has not been to usurp the rights of his sovereignty. He has not, nor does he, demand the revocation

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of the act nor of its provisions, which relate to the internal regulation of the country, but a satisfactory explanation of the clauses of the eleventh section, which impinge the rights of the Crown of Spain. You say that this is irrelevant to the question, and relates to pretensions which the United States separately establish. I do not know what these pretensions can be respecting territories which indubitably belong to His Majesty; but I know that, although it should be supposed there might be such pretensions, the wrong would still exist, it having disturbed the pacific possession in which His Majesty finds himself, to legislate and exercise authority over the said territories; and, from its nature, demands that a corresponding and satisfactory explanation, preliminary to all discussion whatever, should be required. Be pleased to recollect the arguments and the vigor with which the members of your Government exclaimed when they saw themselves deprived of the deposit at New Orleans by the act of a Spanish agent; and you will see how a Government which values its honor, must resent being despoiled of its rights. Recollect, also, that the United States had immediate recourse to the King, my master, desiring that, in the first place, the deposit at New Orleans should be restored, and that, afterwards, any difference or transaction which might exist between the two Governments should be discussed. His Majesty acceded to it with that justice which characterizes him, and, in the same manner, now hopes and confides that the United States will desire to give the most satisfactory explanation respecting the offensive expressions which are founded in the said act.

Reflections of this kind ought, in my opinion, to have appeared to you worthy of the attention of your Government, and ought to have induced you to have transmitted them to it without proceeding to the extremes of which your said letter treats, which, in truth, do not correspond with the pacific desires of which you have always spoken.

Under these circumstances, the King, acquainted with your determination of terminating every ulterior explanation relative to the convention, and not being able to persuade himself that the Government of the United States has authorized the part which you have thought proper to take, has resolved to despatch an extraordinary courier to the United States, and by this means to make that Government acquainted with the state of the negotiation, renewing the observations made in the discussion, manifesting the moderation, the conviction, and the conciliating manner with which this Government has proceeded, and leaving that of the United States, on seeing your letters, to judge of the said affair. If they have reciprocated the friendly disposition of the Government of Spain, His Majesty flatters himself to terminate, by this means, the actual difference which is, from its nature, very far from arriving to the extremes which you suppose it has arrived at. I reiterate, &c.

PEDRO CEVALLOS.

CHARLES PINCKNEY, Esq.

Mr. Pinckney to Mr. Cevallos.

JULY 14, 1804.

Your Excellency asked me if I would put under my signature the request to have the original ratification and forms of exchange, which I sent prepared to you, returned to me, as your Excellency has refused to ratify except on conditions totally inadmissible; and also the notice I gave you that I was, in consequence thereof, preparing to leave Madrid and return to the President and Congress of the United States; and that, when I had prepared and arranged my affairs, and could fix a day, I would send for my passports. Your Excellency will please to consider this letter as complying with your desire. And as I shall leave Madrid shortly, the respect I owe my Government, and the opinion of others, make it necessary for me to state with moderation the reasons which compel me to do so.

I must refer your Excellency to the letters which I have written to you, for the last two years, on all the various subjects of complaint we had against the conduct of many of His Majesty's official servants in his dominions both in Europe and America, and on the claims arising therefrom; and they will show, not only with what justice, but with what mildness and real friendship these claims and complaints have been urged. After the signing the convention, one made entirely in favor of Spain, by postponing, for the present, the arbitration of the French claims, and the point of holding the session of the commissioners in Madrid, instead of any part of the United States, as I wished, supposing it would be the means of laying the foundation for an amicable arrangement of all our differences, the tenor of my letters was ever peculiarly mild and friendly. I heard, during this time, of many acts of the Spanish Government with surprise, but forebore to express it under the idea that they would soon see their true interest in cordially meeting our friendly advances, I rejoiced when circumstances permitted the Government of the United States to ratify the convention, partial as it was, because in that I thought I perceived the hope of permanent peace; it was, therefore, with pleasure I hastened to communicate the event to your Excellency, not doubting that my communication would have been met with equal cordiality. On presenting, however, the ratification for exchange, my concern was equal to my surprise at finding not only a hesitation, but what appeared to me a determination, by some means, to avoid it. In consequence of this, I have used every exertion in my power to produce the ratification; no proper means by personal application to those whose influence I thought ought to have been exerted in its favor, or by letter, were left untried. My letter of the 1st June will always remain an unanswerable proof of the amicable spirit with which I urged the measure, and of my conciliatory efforts to prevent your making the limits of Louisiana a condition to the ratification. It was written in consequence of your letter of the 31st May, which plainly discovered to me that it was in vain to hope either

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for a ratification, or for anything like friendship, or scarcely peace, from Spain. I saw at once, that, if she could bring herself to speak in a style so authoritative and improper (not to say more of it) of the act of a Government as much distinguished for its justice and honor as for its moderation, she must be averse to every approach which could lead to an accommodation. In this letter you plainly call the act of Congress of which you speak an outrage and an insult to His Majesty's sovereignty, endeavoring to smooth it over by saying you hoped the President and Congress were not aware of what they did; adding, thereby, the reproach of precipitancy as well as ignorance of their rights and duties; and concluding with saying, in very direct terms, that such a law lessens their good name—language that a monarch may hold to his vassals, or a country to one which she has humbled, but which, to the unbroken spirit of the United States, will not certainly be very pleasing.

As much as this extraordinary letter of yours astonished me, and will, I am sure, my Government, and notwithstanding its style and manner were alone sufficient to justify my present measures, I again attempted to produce a reconciliation. From the long standing of most of our claims, and the multiplicity of your Excellency's avocations, I supposed it not impossible you might have forgotten a number of them, and that the really dangerous and critical state of things did not strike you, or, (to speak plainly,) unless your aim was war, you would not take the irreparable step of rejecting the only means which appeared likely to prevent it; in which rejection, whilst it added unspeakably to our wrongs, our Government could see nothing but determined enmity on the part of Spain. With a view, therefore, to prevent your Excellency from taking this step, I made another conciliatory effort, and wrote my letter of the 22d June, in which I gave you a summary view of our situation, urging, in the most friendly terms, the necessity of ratifying the convention, and leaving the other questions to future amicable arrangements. Extraordinary and unexpected as was the language and tenor of your letter of 31st May, this of 2d July still more astonished me. In answer to the application of our Government, merely to exchange the ratification, you have ventured to dictate two previous and degrading conditions; the former desiring the total suppression of our claim for French captures and spoiliations within the territory and on the coast of Spain, and condemnations by the French Consuls within the ports of this kingdom—a claim as great, or greater than that provided for by the convention; one equally just and binding, and which I have repeatedly had in charge from my Government to say to you never was relinquished to France in any manner, or for any consideration, nor provided for by her, nor included or spoken of in any settlement with that Power, but, on the contrary, always was, and is still, considered by the United States as a point of national honor which they never will abandon without an arbitration or an equivalent; and your Excellency must know that,

by our agreeing to the suspension of this article in the convention, we should abandon the claim, for certainly this is what you meant and repeatedly called for. To the degrading and humiliating condition of our previously abandoning and suppressing this claim, you have added another still more so if possible. Instead of mildly and amicably applying for some equal and friendly mode to ascertain the limits of Louisiana, you have at once proceeded to determine them yourself; and without leaving to the American Government either the time or a mode to show, or to endeavor to show, that they are right, you have undertaken to decide in your own case; and have not only authoritatively called upon them, in your letter of the 31st May, immediately to revoke a part of a solemn act of their Legislature (your words being "*que revoque la parte del acto,*") but have in that of the 2d of July, ventured to make it another condition, on which alone you will consent to ratify a convention signed by yourself, and which you had always acknowledged that His Majesty was bound in honor and justice to consent to.

I have repeatedly told your Excellency that, as to the two questions of abandoning the French claims, or consenting to anything to affect the limits of Louisiana, my instructions are as positive as possible never to abandon the one, or enter into any contract, or even negotiation, respecting the other. The measure, therefore, of my sending these conditions to the United States, which you mention, and waiting for their reply, was not only wholly improper, but would have been contrary to my instructions, which were by every possible means to expedite the ratification.

I well know that it is utterly impossible for your Excellency, without having been there for some time, to be acquainted with the sentiments, character, or feelings of the American people, and being so, that you may doubt the correctness of the opinions I give; but, be assured, there is not a man in the United States, or its Government, who will not consider the refusal to ratify except on such conditions as you proposed, and the very proposing them as a national indignity, and expect from me, the depositary of their views and public honor here, the measure I mean to take. It is as much the duty of a Minister to assert the rights of his nation, and to refuse to receive or discuss degrading or affrontive propositions, as it is to promote mutual harmony and good understanding. Your Excellency says that the measures I now pursue are not consistent with my usual and former friendly professions; to which I reply, that it is with much concern I have observed that your Excellency's conduct, for the last twelve months, and since the cession of Louisiana, has been very little conformable to the amicable sentiments you now wish me to believe you possess; whilst mine, you well know, have always been sincere and active in endeavoring to conciliate and preserve peace. My Government is informed of all that has passed, and will be of all that is now doing, and are the best judges. Your Excellency had it, however, in your power to show whether your

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professions were sincere, by never making these propositions, because you were long told, before you did make them, how extremely inadmissible and improper they would be considered, or after they were made, and you found the humiliating light in which they were viewed, by withdrawing them, and consenting to ratify the convention, extending the time for receiving the claims to six or eight months, or to twelve months, as I told you you might, and I even proposed it to you.

In speaking of striking out the sixth article, your Excellency does not appear to me to be aware of the nature of the proposition you have made; in remarking on this subject you say, "que la supresion del articulo 6. de la convencion en nada altera la esencia de esta, pues como en dicho articulo no se concede ni se niega el derecho que puede competir á los Americanos por razon de las perjuicios ocasionados en las costas y puertos de España, por los corsarios Franceses, serio que se dexa subsistir tal qual es para lo sucesivo: es claro que por su insercion en la convencion no adquiere mayor fuerza que la que puede tener por si solo si tiene." Your Excellency certainly knows that it is an established principle of the law of nations that, in framing treaties or conventions, which have for their object the continuance of peace, or the accommodation of differences, all points or claims for injuries or damages, which are intended to be reserved, must be mentioned, or otherwise they will be considered as relinquished; and this was my reason for inserting it in the convention. Our object in framing that instrument was, the amicable settlement of all differences arising from spoliations on our trade, contrary to treaties and the law of nations, and for which we hold Spain liable. Had we, therefore, said nothing about the French captures or condemnations within her territories or ports, or should we now agree to strike out the sixth article, there is not a man who knows anything of the law of nations, who will not instantly say that we had abandoned them; and if your Excellency was not convinced of this, why have you so perseveringly endeavored to suppress it?

By the law of nations, "a monarch cannot, in honor, refuse to ratify a convention made by a Minister with full powers, unless it can be proved that the Minister had remarkably and openly deviated from his instructions, or the monarch has some other very strong reasons for so doing, but they must be very strong." Now, according to this principle, I deny positively, from your own statement of the conditions, that His Majesty has any sufficiently strong reasons to justify the not ratifying this convention: it cannot be because you made it contrary to your instructions; for you are now, and were then, his first Secretary of State, and signed it under his own eye, and in his own palace: neither can it be on account of the suppression of the sixth article; for all that can now be known about it was known then, and the relinquishment to France of other and totally distinct claims, of which you speak so much, and without the least weight, was as much in existence as it is now: for that convention was made

in 1800, two years before the present; nor would it be considered, by the law of nations, a very honorable thing to refuse the ratification on the ground of a small part of one of the Floridas, which, you say, Congress have encroached upon, when it is well known that the whole value of both the Floridas would not cover the claims which this convention is intended to provide for. To endeavor, therefore, to get rid of the ratification, on account of a dispute about a small slip of those colonies, will not, I suppose, be viewed by our Government, or any neutral or impartial one, as that honorable right which, according to the law of nations, can alone justify a Power in refusing to ratify a convention formed by a Minister fully authorized. Having high respect for His Majesty's honor and justice, I am very unwilling to believe he could have authorized you to refuse to ratify the convention on these grounds, or to hold such language, or make such demands of the United States, as they have, upon all occasions, manifested great respect for his person and Government. Be assured that our own would have regarded the refusal alone with great seriousness; but coupled with these degrading conditions of totally abandoning the French claims, by the suppression of the sixth article, and, as it were, commanding the repeal of a law of Congress without allowing us time to consult and examine or defend it, are so high an indignity, that I am convinced, had I not determined to refuse all discussions upon the subject of admitting them as conditions of the ratification, as well as to be the instrument of transmitting them to my Government, and, finding you insisted on it, had I not also immediately determined to leave Madrid, and put an end to all discussions on the conditions proposed here until the President's pleasure be known, I should not only have met with his disapprobation, but that of every man in a country where every individual feels himself personally interested in the honor and character of his Government.

The case your Excellency quotes of the Intendant of New Orleans does not apply; that was a flagrant breach of a solemn treaty, and deprivation of a right secured by that treaty, and daily used, and indispensable to a numerous portion of our citizens, which, as your Excellency well knows, was the reason why the Senate did not ratify the convention during that session, and was the cause of the inevitable delay that took place, and for which a Spanish agent was blameable, whom your Minister declared instantly to our Executive had no authority to do so: while the law you complain of is the act of a Government, so constructed as that it is impossible for them to proceed without that due examination which is necessary to prevent precipitate, and generally leads to just, decisions of a Government, as remarkable for its attention to the rights of foreigners as to those of their own citizens; and which, no doubt, will be able to maintain the propriety of any law it has passed, by strong and unanswerable arguments. And here let me remark to your Excellency, that it was not on account of the

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time you may have taken to answer my first application to ratify, that I objected, and wrote my letter of the 5th of July; for if you had taken much more, although I should not have considered it as worthy of Spain to think of a revenge of that kind, for the unavoidable delay the convention met with in the Senate, on account of the shutting the deposit of New Orleans, yet I should have waited some time longer; but it was to the answer itself of the 2d of July, when made, and to the refusal to ratify, except upon the degrading conditions you annexed, which I objected to; and it is upon this answer, and this alone, that I grounded my proceedings.

Believing, as I solemnly do, that when the refusal to ratify, except on these degrading conditions, be made known in the United States, this affair cannot be amicably arranged without such sacrifices or concessions, on the one part or the other, as no people having a national character to support will be ready to make; and as I am sure we shall not, there appears to me a great probability of a misunderstanding; and, so believing, it is my indispensable duty not to conceal it from the citizens of the United States in the ports of Spain, who are, or may be, interested, and indeed are always applying to me on the subject of the convention, well knowing it was the only mode to preserve friendship or peace between the two countries. The same duty required of me a similar communication to the commander of our ships in the Mediterranean, for his notice, and of that of our merchant vessels, that they should, using their own discretion, avoid making too free with the Spanish ports or coasts, during the state of uneasiness and uncertainty which now exists. This indispensable part of my duty your Excellency seems, improperly, to feel as a menace, when a moment's reflection should have convinced you it was a duty I could not avoid. How, indeed, was it possible to neglect it? or what other opinion can we form, but that, when the United States see the convention returned, and with conditions so humiliating and inadmissible, they will give up all hope of payment here, and, however unwillingly, still be inevitably compelled to seek some mode of paying themselves? Having this view, therefore, of the business, how unpardonable would it have been in me not to warn our citizens of it, and prevent their being lulled into security, and surprised at a moment when they least suspected it.

Your Excellency complains of my fixing a short day, and requiring a positive answer. The reasons are obvious; you were to leave Madrid with the Court in a short time. It was at least three months since you knew that the convention was ratified, for I have a right to believe you knew it before I did; you had, therefore, full time to consider it; and as my former experience had convinced me, that, on a question not agreeable to you, it would be difficult for me to obtain an answer for a long time, the proposing of these conditions, and my public duty, made it necessary for me immediately to know, and that in the shortest time possible, if you would ratify or not without

them; and, certainly, after the manner in which you treated our Government, in your letter of the 31st of May, and that of the 2d of July, your Excellency could not expect any other conduct on my part. There was another reason which gave me a right to consider all discussions on the conditions as out of the question, which was, that my two letters in June, copies of which I send here annexed, had anticipated the question of the conditions proposed, and had shown you the impossibility of my suffering them to be incorporated into the ratification; and this was done before you formally proposed them, as I had received notice you intended it, and endeavored to prevent your doing so.

In all the differences between Great Britain and France, the United States have uniformly maintained their rights with a firmness that has done them honor, in the opinion of every nation; and, as I have often told your Excellency, it is not now to Spain, or any other country, they will yield them. My letter of the 22d of June, and the previous friendly one of the 1st of June, (both of which I annex, and desire your Excellency, in any use you may make of them, to consider as a part of this,) while they state the sufferings of our citizens, and the wrongs the convention is intended to remedy, will, at the same time, show my unwearied exertions, and the mildness with which I attempted to persuade your Excellency to ratify it.

In speaking, as your Excellency does, that it is general in all countries, on questions of this kind, to resort to the ordinary tribunals, I only remark, that your Excellency well knows how painful it has been to be continually representing the sufferings and losses of our citizens, and the delays attending their applications to the tribunals here; delays of such an extent, as to impress them with the opinion that a recourse to the tribunals of Spain can seldom be viewed as the proper means to obtain the rights of American citizens; that the years and means necessary to pursue their claims, through those channels, were infinitely more ruinous than the first loss; and that it was essential for our Government decidedly to interfere; and, for the truth and justice of this remark, I appeal to every unfortunate American citizen who has had business here for the last six years.

How far the conduct of your Excellency, in refusing to ratify, and bring into effect the only mode that remained of arranging them peaceably, will go to strengthen the opinion just given, is left for you to decide. After what has happened, our citizens will very much doubt whether there was ever any serious intention here to ratify the convention as it was made; and, if it is now ratified, I shall always believe it was entirely owing to the measures my duty made it necessary for me to pursue. I form this opinion by reading your Excellency's letter of the 9th, in which I am pleased to see you begin, at last, to have some value for the friendship and peace of the United States; and to find there is a point of indignity or neglect, beyond which even their moderation

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will not go. I am, therefore, led to hope that the messenger, who you say is to sail for the United States, will carry out the convention fully ratified, without limitation or condition, and with orders to arrange it agreeably to the United States.

This I advise your Excellency most sincerely to do. I have always done so, until your letter of the 2d of July, in the most mild and friendly terms, and with the greatest deference and respect to Spain; and, had your Excellency proceeded in the same way, it would have been no less honorable to your talents than to the justice and friendly intentions of His Majesty, which you so often mention.

Your Excellency must perceive that the measures I have adopted were rendered indispensable by the respect I owe my Government; it being my duty to defend them from the charge of having lightly or inconsiderately legislated upon important subjects, and thereby outraged and usurped the rights of others. It was equally my duty to defend, and preserve inviolate, the well-founded claims of a numerous and deserving class of our citizens, whose legal and meritorious exertions, while they contribute to increase the enterprise, and extend the commerce of the United States, have the fullest right to demand, and will always be sure to receive, the cordial and unceasing support of their Government.

With this explanation of the reasons which will compel me to leave Madrid, and with the determination and orders to keep our citizens in Spain constantly warned against being lulled into security by any notification or information which they may receive, except from their Government or its officers, I end this letter. It has become my duty to return to the President and Congress of the United States, in order to give them, and, through them, to my fellow-citizens, such statements and opinions as can alone be properly done in person. To them I shall refer the question, well knowing that, in their hands, the rights, the character, and the sacred honor of a free people are always safe.

III.—*Correspondence between the Secretary of State and the Marquis de Casa Yrujo, on the ratification of the Convention of 1802.*

The Marquis de Casa Yrujo to the Secretary of State.

OCTOBER 13, 1804.

SIR: By the communications I have made to this Government, and the translation of the correspondence between His Excellency Don Pedro Cevallos and Mr. Pinckney, Minister of the United States to His Catholic Majesty, you are informed of the just motives His Catholic Majesty has for not ratifying the convention pending between our two Governments, except on certain conditions, founded on the most rigorous justice, and necessary, as well to the honor of his sovereignty as to the protection of the interests of his subjects. That His Majesty has the right to propose the alteration which he may judge proper for these objects, before the ratification, is indisputable, not only from the expression which is found in the seventh article of the said conven-

tion, which says, "the present convention shall have no force or effect until it be ratified by the contracting parties," but from many other antecedent examples, as that which occurred at the exchange of ratifications at Paris at the Treaty of Peace of 1763, of which I verbally informed you, and, lately, in the Treaty of Limits between England and the United States; the latter, as is understood, having refused to ratify a part of it, in consequence of the acquisition of Louisiana.

By order of the King, my master, I have renewed here the opposition made by His Majesty to the ratification of the said convention, except under the conditions which were proposed in Madrid to the beforementioned Minister of the United States, one of which was the entire suppression of the sixth article of the convention; but, having recollected that, from insisting on this point, the consequence might be the complete annulment of a convention by which the King, my master, animated by the sentiments of justice which characterize him, desired to do justice to the citizens of the United States who might have suffered during the last war by the excesses of his commanders or subaltern officers, contrary to the existing treaty and the laws of nations, and more and more to prove that the King, my master, proceeds in this affair with the liberality and frankness which always mark his conduct towards the United States, I am authorized to say to you that His Catholic Majesty will accede to the ratification of the said convention, under the following conditions:

1st. The Government of the United States will suppress or modify, as I proposed to you in one of my letters in the month of March past, the eleventh section of the act of Congress of the 24th of February last, and on which His Excellency Don Pedro Cevallos has made like complaints to the American Minister in Madrid; or, if it should be more agreeable to this Government, it will declare to me in writing, through you, that, by the said eleventh section of the beforementioned act, it had not intended to offer any insult to His Catholic Majesty, nor any aggression upon the rights of his sovereignty, and that the Executive, as the true interpreter of the said law, shall declare that the object or intention of what is contained in the said section is and ought to be only applicable to the territory of the United States, and not to the country belonging to and in the actual possession of His Catholic Majesty; it being well understood that, until the commission destined to the demarcation of limits shall have decided, by common consent, that the territory claimed by the United States did not belong to His Majesty, but to the said States, they, nor the President authorized by them, shall make no change in it, nor publish laws, nor establish custom-houses, nor any other species of regulations in said territory; but, on the contrary, that they should leave things *in statu quo*, as they were before the resolution of Congress complained of. Moreover, there shall be given the corresponding notoriety to this act of ratification on the part of the United States, in a mode that, without in any manner compro-

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mitting its dignity, may prove that satisfactory explanations were given on this point to His Catholic Majesty.

2d. His Catholic Majesty being informed that the mercantile operations of the citizens of the United States, out of some of which, without doubt, their reclamations will grow, have extended to the most distant possessions of His Majesty, as well in America as in the Philippine islands, and, from the great distance of these points, and the interruption to which the navigation to them is subjected during a great part of the year, the term of eighteen months prescribed to the Commissioners by the thirtieth article to receive all the reclamations must be short, it becomes necessary that the term should have a reasonable extension; and this is requisite, to the end that the subjects of the King, living at so great a distance, may draw the advantage which is due to them from the beforementioned convention.

3d. Although, as has been made apparent, by reasons which His Majesty has not as yet seen combated, that the complete suppression of the sixth article would be conformable to entire justice; nevertheless, thinking that my master will not oppose himself to the retention of the said article, if an alteration is made in its phraseology, which, without diminishing the right of the United States, should give more clearness to the intentions of His Majesty, contained in the said article, the sixth article should be expressed in terms nearly as follows:

"The beforementioned Plenipotentiaries, not having been able to agree on the principle of the claims originating in the excesses of the foreign privateers, agents, consuls, or tribunals, in their respective territories—Spain considering herself not responsible for these, as appears both from the circumstances and the time of the offence, as well as from the character of the measures afterwards taken by the United States with France—and the United States, on the contrary, claiming from Spain the amount of the damages and injuries arising from that source, both Governments have expressly agreed that each Government reserve to itself, (as is done by this convention,) not only for itself, but also for its subjects and citizens, respectively, all the rights which they may now have, it being well understood that the ratification by His Catholic Majesty of the present convention ought not, nor shall not, be considered as an acknowledgment on his part of any right, or that of the United States, to such reclamations and pretensions, nor as a renunciation by His Majesty of the exceptions which result from the conventions between France and the United States."

Under these conditions, which the King flatters himself will appear just to the American Government, His Majesty is ready to ratify the beforementioned convention: and from the moderation, and even liberality, so clearly manifested in these, it will remain apparent, that if the said convention should not take effect, it ought not to be attributed to the want of frank and friendly dispositions on the part of the King my master.

God preserve you many years.

Mr. Madison, Secretary of State, to the Marquis de Casa Yrujo, Minister of His Catholic Majesty.

DEPARTMENT OF STATE,

October 15, 1804.

SIR: Your letter of the 13th instant, communicating certain conditions which His Catholic Majesty considers as proper to be annexed to his ratification of the convention of August 11, 1802, now depending between the two Governments, has been laid before the President. One of these conditions refers to a section in an act of Congress passed on the 24th day of February last, regarded by His Catholic Majesty as disrespectful to his sovereignty, and requires, as a reasonable preliminary to the ratification of the depending instrument, that the said act should be freed, by authentic exposition, from the apparent import at which umbrage has been taken. It could not be learned by the President without some surprise, that the law in question should have given rise to complaint, and much more that it should be made a reason for suspending the final sanction of His Catholic Majesty to an instrument deliberately formed, and awaiting that single formality only for its completion. The President had certainly a right to expect that a legislative act, depending essentially for its effect in the particular case on his discretion, would have been left to the regular exposition and execution, before it should become the object of criticism and complaint from any foreign Government. He had a right, consequently, to prescribe this answer, when the act above cited was first made a subject of representation; and he might even now be justified in resting on this sound principle the reply to the representation which is repeated in the communication just received from you. Yielding, nevertheless, to the disposition of the United States to maintain the most friendly understanding with Spain, and to that frankness which is dictated by the integrity of his views, he charged me with the candid explanations which were contained in my letter of March the 19th last. These explanations, when received by His Catholic Majesty, cannot fail to satisfy him that the United States, not less careful to forbear than ready to resent real insults, could not have meditated, by the act complained of, the slightest disrespect to his rights or his sovereignty; and as the most definite proof of the sentiments entertained for His Catholic Majesty, I am now charged to enclose for his information the executive act of the President, founded on, and of a nature equally public with, the act of Congress aforesaid; by which it will be seen that, in expounding and applying the latter, there is the most exact conformity to the assurance given in the letter of March the 19th; that the operation of the 11th section would take place within the acknowledged limits of the United States, and would not be extended beyond them, until it should be rendered expedient by friendly elucidation, and adjustments with the Spanish Government. In order to hasten those, a special mission to Madrid was sometime since provided for; and if the destined Minister Extraordinary has not already repaired thither, the in-

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structions, which will now be repeated, if no unfavorable considerations present themselves, may be expected soon to have that effect. In the meantime, the President concurs with the Spanish Government in the expediency of leaving things precisely *in statu quo*. And he persuades himself that it will be deemed equally expedient on both sides to give to this precaution its full effect, by a mutual forbearance to increase unnecessarily either within or on the borders of territories, the limits of which remain to be adjusted, military provisions of any kind, which, by exciting jealousies on one side or the other, may have tendencies equally disagreeable to both.

The other condition proposes to remodel the terms of the sixth article of the convention, which leaves for subsequent discussion the particular class of claims therein described. The President does not conceal his regret at seeing the ratification of the convention clogged with a condition which, if persisted in, could not easily be reconciled with that delicacy in such transactions which he has always felt a pleasure in ascribing to His Catholic Majesty, or with that desire which His Catholic Majesty has so often professed, to multiply proofs of his friendly sentiments towards the United States. If the preceding condition had not been the result of misconception, which can now no longer exist, it might have had a natural source in the sensibility, not unbecoming a magnanimous Government, and might have been urged by the considerations, it had reference to an event subsequent to the first assent given by His Catholic Majesty, and which, although distinct from the intrinsic merits of the convention, might raise a question how far the completion of it was permitted by a new state of things. The condition relating to the sixth article is of a character altogether different. The article, as it now stands, was negotiated under the eye and with the approbation of the Spanish Government. All the principles, all the facts, all the authorities of public law, were at that time the same as at present. And there can be the less reason for attempting to unsettle what was then decided, as the period of negotiation was sufficiently protracted for the most minute examination and the maturest reflection. If it be said that the alteration proposed would be in words only, and not in the meaning of the article, may it not with greater propriety be answered that, on that supposition, it cannot be of such importance as to be pressed as a condition which would require all the delay, and all the forms of a new stipulation, and which might have the effect of frustrating the convention altogether? For, without entering into a comparison of the article in its present terms with the substitute proposed, it is obvious that the difficulty of adjusting a form of expression—a difficulty not inconsiderable originally—would be much increased by the necessity of seeking in the relation of the new to the old article, as well as in the terms of the new, the precise construction which ought to be given to it.

Were it necessary to enforce these observations by an inquiry into the right of His Catholic Ma-

jesty to withhold his ratification in this case, it would not be difficult to show that it is neither supported by the principles of public law, nor countenanced by the examples which have been cited. According to the former, such a refusal ought to be founded either on a departure of the negotiating Minister from his instructions, or on intervening occurrences, or on some surprise or deception. Neither of these can be alleged. The Spanish Government itself was privy to the negotiation, leaving, consequently, its final act of ratification the merest ceremony. No new facts connected with the subject have come to light. The negotiation was so long on foot, and so fairly conducted, that neither surprise nor deception can possibly be pretended. In every such case, besides, the motive for refusal ought to be of great and evident importance. In the present case, the very argument for the change destroys the importance of it, since the change is alleged to be in the words, and not in the meaning, of the article. As to the examples cited, they bear no analogy to the case to which they are applied. In that of the Treaty of Peace at Paris of 1763, the plea, on the British side, is understood to have been a matter deeply interesting, which was discovered and declared by the negotiator himself on the very day of his signing the instrument. The other example of the conditional ratification here of a late convention with Great Britain is still more dissimilar; being occasioned by an important event—the acquisition of Louisiana by the United States—which might have given to one of the articles a scope contemplated by the instructions of neither party, nor within the knowledge or intention of either when signed by the negotiators. Another distinction absolutely decisive is, that the conditional ratification proceeded from the Senate, who, sharing in treaties on the final ratification only, and not till then even knowing the instructions pursued in them, cannot be bound by the negotiation like a sovereign, who holds the entire authority in his own hands. When peculiarities of this sort in the structure of a Government are sufficiently known to other Governments, they have no right to take exception at the inevitable effect of them.

With respect to the enlargement of the time for the assembling of the Commissioners, which can be done without any remodification of the convention, the President's respect for the wishes of His Catholic Majesty will not permit him to refuse his concurrence; although he does not himself perceive the necessity or advantage of it. The Commissioners who may be appointed on the part of the United States will accordingly be apprized that their proceedings are not to be commenced till the month of May next, unless further inquiry shall satisfy His Catholic Majesty that an earlier day will not be inconvenient.

On a view of the whole subject, as it now presents itself, the President infers, with confidence, that His Catholic Majesty, recollecting that the claims to be adjusted under the convention are of the most incontestable character, and finding that a disappearance of every other obstacle to his rat-

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ification leaves to him the sole decision between adhering to or relinquishing a condition, for which there cannot be a reason now which did not exist, and was not known at first, and which, as represented on his part, would otherwise be of too little importance to be turned against the act of his own Plenipotentiary, entered into with his own privity, will pursue the course which is prescribed not less by his delicacy, or rather his good faith, than by his love of justice, and the friendship subsisting between Spain and the United States.

In pressing thus the consummation of the suspended instrument, the President cannot be influenced by any peculiar advantage given by the terms of it to the United States. He well knows, as has been just noticed, that the claims therein provided for cannot ultimately be disallowed; and that the convention, if carried into effect in its present form, will still leave for subsequent accommodation several questions deeply interesting to the subsisting relations. If he indulges a solicitude on the occasion, it is because the state of the transaction has justly led the claimants into preparations and expectations, which would involve many in useless expense, and all in disappointment and disgust; because he regards the convention as a step towards a satisfactory adjustment of other depending and accruing questions; because a completion of it will dissipate appearances, which have already begotten inquietudes on both sides, and may embarrass an intercourse desirable and valuable to both; because in a word, it will be a pledge of future justice, at the same time that it guarantees the present harmony between the two nations. These are considerations which cannot surely be entitled to less weight with the Spanish Government than is allowed to them by that of the United States.

It will be added only, that, considering the disadvantages of every kind incident to the present state of uncertainty, and particularly that the arrangements here, preparatory to the execution of the convention, must be regulated by something more positive than an inference, however reasonable, that the instrument will receive from His Catholic Majesty an unqualified ratification, I need not remind you of the utility which would result from such assurances as your knowledge of the views of your Government may enable you to express to this, that the event may be now relied on. On this point, I shall hope for the favor of as early an answer as you can make it convenient to transmit for the information of the President.

I have the honor to be, &c.

JAMES MADISON.

IV.—*Instructions given by the Secretary of State to Mr. Monroe, and to Messrs. Monroe and Pinckney.*

Mr. Madison to Mr. Monroe.

DEPARTMENT OF STATE, July 29, 1803.

SIR: The communications by Mr. Hughes, including the treaty and conventions signed with the French Government, were safely delivered on the 14th instant. Enclosed is a copy of a letter

written in consequence of them to Mr. Livingston and yourself.

On the presumption which accords with the information given by Mr. Hughes, that you will have proceeded to Madrid, in pursuance of the instructions of the 17th February last, it is thought proper to observe to you, that although Louisiana may, in some respects, be more important than the Floridas, and has more than exhausted the funds allotted for the purchase of the latter, the acquisition of the Floridas is still to be pursued, especially as the crisis must be favorable to it.

You will be at no loss for the arguments most likely to have weight in prevailing on Spain to yield to our wishes. These colonies, separated from her other territories on this continent by New Orleans, the Mississippi, and the whole of Western Louisiana, are now of less value to her than ever; whilst to the United States they retain the peculiar importance derived from their position, and their relations to us through the navigable rivers, running from the United States into the Gulf of Mexico. In the hands of Spain they must ever be a dead expense in time of peace; indefensible in time of war, and at all times a source of irritation and ill blood with the United States. The Spanish Government must understand, in fact, that the United States can never consider the amicable relations between Spain and them as definitively and permanently secured, with an arrangement on this subject, which will substitute the manifest indications of nature for the artificial and inconvenient state of things now existing.

The advantage to be derived to your negotiations from the war that has just commenced will certainly not escape you. Powerful, and it might be presumed effectual, use may be made of the fact that Great Britain meant to seize New Orleans with a view to the anxiety of the United States to obtain it; and of the inference from that fact, that the same policy will be pursued with respect to the Floridas. Should Spain be engaged in the war, it cannot be doubted that they will be quickly occupied by a British force, and held out on some condition or other to the United States. Should Spain be still at peace, and wish not to lose her neutrality, she should reflect that the facility and policy of seizing the Floridas must strengthen the temptations of Great Britain to force her into the war. In every view it will be better for Spain that the Floridas should be in the hands of the United States than of Great Britain; and equally so that they should be ceded on beneficial terms by herself, than that they should find their way to us through the hands of Great Britain.

The Spanish Government may be assured of the sincere and continued desire of the United States to live in harmony with Spain; that this motive enters deeply into the solicitude of their Government for a removal of the danger to it which is inseparable from such a neighbourhood as that of the Floridas; and that, having by a late convention with Great Britain adjusted every territorial question and interest with that nation, and the treaty with France concerning Louisiana

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having just done the same with her, it only remains that the example be copied into an arrangement with Spain, who is evidently not less interested in it than we are.

By the enclosed note of the Spanish Minister here, you will see the refusal of Spain to listen to our past overtures, with the reasons for the refusal. The answer to that communication is also enclosed. The reply to such reasons will be very easy. Neither the reputation nor the duty of His Catholic Majesty can suffer from any measure founded in wisdom and the true interests of Spain. There is as little ground for supposing that the maritime Powers of Europe will complain of, or be dissatisfied, with a cession of the two Floridas to the United States, more than with the late cession of Louisiana by Spain to France, or more than with the former cessions through which the Floridas themselves have passed. What the treaties are subsequent to that of Utrecht, which are alleged to preclude Spain from the proposed alienation, have not been examined. Admitting them to exist in the sense put upon them, there is probably no maritime Power who would not readily acquiesce in our acquisition of the Floridas as more advantageous to itself, than the retention of them by Spain. Shut up against all foreign commerce, and liable at every moment to be thrown into the preponderant scale of Great Britain, Great Britain herself would unquestionably have no objection to their being transferred to us, unless it should be drawn from her intention to conquer them for herself, or from the use she might expect to make of them in a negotiation with the United States. And with respect to France, silence at least is imposed on her by the cession to the United States of the province ceded to her by Spain, not to mention that she must wish to see the Floridas, like Louisiana, kept out of the hands of Great Britain; and has, doubtless, felt that motive in promising her good offices with Spain for obtaining these possessions for the United States. Of this promise, you will, of course, make the proper use in your negotiations. For the price to be given for the Floridas, you are referred, generally, to the original instructions on this point. Although the change of circumstances lessens the anxiety for acquiring immediately a territory which now, more certainly than ever, must drop into our hands, and, notwithstanding the pressure of the bargain with France on our treasury, yet, for the sake of a peaceable and fair completion of a great object, you are permitted by the President, in case a less sum will not be accepted, to give two millions and a quarter of dollars, the sum heretofore apportioned to this purchase. It will be expected, however, that the whole of it, if necessary, be made applicable to the discharge of debts and damages claimed from Spain, as well as those not yet admitted by the Spanish Government as those covered by the convention signed with it by Mr. Pinckney, on the 11th day of August, 1802, and which was not ratified by the Senate, because it embraced no more of the just responsibilities of Spain. On the subject of these claims, you will hold a strong language. The

Spanish Government may be told plainly that they will not be abandoned any further than an impartial tribunal may make exceptions to them. Energy in the appeal to its feelings will not only tend to justice for past wrongs, but to prevent a repetition of them in case Spain should become a party to the present war.

In arranging the mode, the times, and the priorities, of paying the assumed debts, the ease of the Treasury is to be consulted as much as possible: less is not to be done with that view than was enjoined in the case of the French debts to our citizens. The stock to be engaged in the transaction is not to be made irredeemable without a necessity not likely to arise; and the interest, as well as the principal, should be payable at the Treasury of the United States. The only admissible limitation, on the redemption of the stock, is, that the holder shall not be paid off in less than about one-fifth or one-fourth of the amount in one year.

Indemnifications for the violation of our deposit at New Orleans have been constantly kept in view in our remonstrances and demands on that subject. It will be desirable to comprehend them in the arrangement. A distinction, however, is to be made between the positive and specific damages sustained by individuals, and the general injuries accruing from the breach of treaty. The latter could be provided for by a gross and vague estimate only, and need not be pressed as an indispensable condition. The claim, however, may be represented as strictly just, and a forbearance to insist on it as an item in the valuable considerations for which the cession is made. Greater stress may be laid on the positive and specific damages capable of being formally verified by individuals; but there is a point beyond which it may be prudent not to insist even here; especially as the incalculable advantage accruing from the acquisition of New Orleans will diffuse a joy throughout the Western country, that will drown the sense of these little sacrifices. Should no bargain be made on the subject of the Floridas, our claims of every sort are to be kept in force.

If it be not possible to bring Spain to a cession of the whole of the two Floridas, a trial is to be made for obtaining either, or any important part of either. The part of West Florida adjoining the territories now ours, and including the principal rivers falling into the Gulf, will be particularly important and convenient.

It is not improbable that Spain, in treating on a cession of the Floridas, may propose an exchange of them for Louisiana beyond the Mississippi, or may make a serious point of some particular boundary to that territory. Such an exchange is inadmissible. In intrinsic value there is no equality; besides the advantage given us by the western bank of the entire jurisdiction of the river. We are the less disposed also to make sacrifices to obtain the Floridas, because their position and the manifest course of events guaranty an early and desirable acquisition of them. With respect to the adjustment of a boundary between Louisiana and the Spanish territories, there might

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be no objection to combining it with a cession of the Floridas, if our knowledge of the extent and character of Louisiana were less imperfect. At present, any arrangement would be a step too much in the dark to be hazarded; and this will be a proper answer to the Spanish Government. Perhaps the intercommunications with the Spanish Government on this subject, with other opportunities at Madrid, may enable you to collect useful information and proofs of the fixed limits, or of the want of fixed limits, to Western Louisiana. Your inquiries may also be directed to the question, whether any, and how much, of what passes for West Florida, be fairly included in the territory ceded to us by France? The treaties and transactions between Spain and France will claim particular attention in this inquiry.

Should no cession whatever be attainable, it will remain only for the present to provide for the free use of the rivers running from the United States into the Gulf. A convenient deposit is to be pressed as equally reasonable there as on the Mississippi; and the inconveniency experienced on the latter, from the want of a jurisdiction over the deposit, will be an argument for such an improvement of the stipulation. The free use of those rivers for our external commerce is to be insisted on as an important right, without which the United States can never be satisfied; and without an admission of which, by Spain, they can never confide either in her justice or her disposition to cultivate harmony and good neighborhood with them. It will not be advisable to commit the United States into the alternative of war, or a compliance on the part of Spain; but no representation short of that can be stronger than the case merits.

The instruction to urge on Spain some provision for preventing, or rectifying by a delegated authority here, aggressions and abuses committed by her colonial officers, is to be regarded as of high importance. Nothing else may be able to save the United States from the necessity of doing themselves summary justice. It cannot be expected that they will long continue to wait the delays and the difficulties of negotiating, on every emergency, beyond the Atlantic. It is more easy, and infinitely more just, that Spain and other European nations should establish a remedy on this side of the Atlantic, where the source of the wrongs is established, than that the complaints of the United States should be carried to the other side, and, perhaps, wait till the Atlantic has more-over been twice crossed in procuring information for the other party, with which a decision may be refused.

The navigation of the bay of St. Mary's is common to Spain and the United States; but a light-house, and the customary water marks, can be established within the Spanish jurisdiction only. Hitherto, the Spanish officers have refused every proper accommodation on this subject. The case may be stated to the Government of Spain, with our just expectation that we may be permitted either to provide the requisite establishments ourselves, or to make use of those provided by Spain.

This letter will be addressed to Madrid; but as it is possible that you may not have left Paris, or may have proceeded to London, a copy will be forwarded to Paris, to be thence, if necessary, sent on to London. In case it should find you either at Paris or London, it must be left to your own decision how far the call for you at either of those places ought to suspend these instructions. Should you decide to go to Madrid, it may be proper first to present your credence to the French or British Government, as the case may be; and to charge a fit person with the public business during your absence. Should you even be at Paris, and your commission filled up for London, it may be best to proceed first to London, if the call to Madrid be not very urgent.

I shall write to Mr. Pinckney, and inform him that this letter is intended for his use jointly with yours; though addressed to you alone, because in part not applicable to him. Should you suspend, or have suspended, your visit to Madrid, you will please to write to him also, giving him your ideas as to the expediency of prosecuting the object of the joint instructions or not until you can be with him.

I have the honor to be, &c.,

JAMES MADISON.

The Secretary of State to James Monroe, Esq., their Minister Extraordinary, jointly with Charles Pinckney, Esq., to the Court of Spain, dated

DEPARTMENT OF STATE, April 15, 1804.

SIR: It being presumed that, by the time of your receiving this communication, the negotiation, with which you were charged by my letter of the 5th January last, will no longer require your presence in London, the President thinks it proper that you should now proceed to Madrid, and, in conjunction with Mr. Pinckney, open a negotiation on the important subjects remaining to be adjusted with the Spanish Government. You will understand, however, that besides the consideration how far your immediate departure may be permitted by the state of our affairs with the British Government, or by events unknown at this distance, you are at liberty to make it depend in a due degree on the prospect of active co-operation or favorable dispositions from quarters most likely to influence the councils of Spain. It will be of peculiar importance to ascertain the views of the French Government. From the interest which France has in the removal of all sources of discord between Spain and the United States, and the indications given by her present Government of a disposition to favor arrangements for that purpose, particularly in relation to the territory remaining to Spain on the eastern side of the Mississippi, and from the ascendancy which the French Government has over that of Spain, of which a recent and striking proof has been given in the prompt accession of the latter on the summons of the former, to the transfer of Louisiana to the United States, notwithstanding the orders which had been transmitted to the Spanish Envoy here to protest against the right to

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make the transfer, much will depend on, and much is expected from, the interposition of that Government, in aid of your negotiations. Mr. Livingston has been instructed to cherish the motives to such an interposition, as you will find by the extract from my letter to him herewith enclosed; and if you should take Paris in your way to Madrid, as it is probable, you will not only be able to avail yourself of all his information, but will have an opportunity of renewing the personal communications which took place during your joint negotiations.

The objects to be pursued are, 1st, an acknowledgment by Spain that Louisiana, as ceded to the United States, extends to the river Perdido; 2d, a cession of all her remaining territory eastward of that river, including East Florida; 3d, a provision for arbitrating and paying all the claims of citizens of the United States not provided for by the late convention, consisting of those for wrongs done prior to the last peace, by other than Spanish subjects, within Spanish responsibility, for wrongs done to the Spanish Colonies by Spanish subjects or officers, and for wrongs of every kind for which Spain is justly responsible, committed since the last peace. On the part of the United States, it be may stipulated that the territory on the western side of the Mississippi shall not be settled for a given term of years, beyond a limit not very distant from that river, leaving a spacious interval between our settlements and those of Spain, and that a sum of — dollars shall be paid by the United States in discharge of so much of the awards to their citizens. It may also be stipulated, or rather may be understood, that no charge shall be brought by the United States against Spain, for losses sustained from the interruption of the deposit at New Orleans.

The subjoined draught puts into form and into detail the arrangement to which the President authorizes you to accede; relying on your best efforts to obtain better terms, and leaving to your discretion such modifications as may be found necessary, and will not materially affect the proportion between the gains and the concessions by the United States.

ART. 1. § 1. Spain acknowledging and confirming to the United States the cession of Louisiana, in an extent eastwardly to the river Perdido, cedes to them forever all the territory remaining to her between the Mississippi, the Atlantic, and the Gulf of Mexico, together with all the islands annexed thereto, either whilst the Floridas belonged to Great Britain, or after they became provinces of Spain.

Or, if the article be unattainable in that form, Spain cedes to the United States forever all the territory, together with all the islands belonging thereto, which remain to her between the Mississippi, the Atlantic, and the Gulf of Mexico.

§ 2. Possession of the said territory shall be delivered to a person or persons authorized by the United States to receive the same, within — days, or less, if practicable, after the exchange of the ratifications of this convention. With the said territory shall be delivered all public property,

excepting ships and military stores, as also all public archives belonging to the provinces comprehending the said territory.

§ 3. Within ninety days after the delivery of possession, or sooner, if possible, the Spanish troops shall evacuate the territory hereby ceded; and if there should be any Spanish troops remaining within any part of the territory ceded by France to the United States, all such troops shall, without delay, be withdrawn.

§ 4. Spanish subjects within the ceded territory, who do not choose to become citizens of the United States, shall be allowed eighteen months to dispose of their real property, and to remove or dispose of their property.

§ 5. The inhabitants of the ceded territory shall be entitled to the same incorporation into the United States, and to the same protection in their religion, their liberties, and their property, as were stipulated to the inhabitants of the territory ceded to the United States by the Treaty of the 30th April, 1803, with the French Republic.

ART. 2. § 1. It is agreed that, for the term of — years, no lands shall be granted, nor shall persons who may have settled since October 1, 1800, on lands not granted prior thereto, be permitted to continue within the space defined by the following limits, to wit: by a limit consisting on one side of the river Sabine, or Mexicano, from the sea to its source; thence, a straight line to the confluence of the rivers Osages and Missouri; and by a limit on the other side, consisting of the river Colorado. (or some other river emptying into the bay of St. Bernard,) from its mouth to its source; thence a straight line, to the most southwestwardly source of the Red river, with such deflections, belonging to the Missouri and the Mississippi from those belonging to the Rio Bravo, to the latitude of the northernmost source of that river; and thence, a meridian to the northern boundary of Louisiana.

§ 2. Such of the settlements within the foregoing limits, not prohibited by article 2, section 1, as were not under the authority of the Government of Louisiana, shall continue under the authority of Spain. Such as were under that authority shall be under the authority of the United States. But the parties agree that they will respectively offer reasonable inducements, without being obliged to use force, to all such settlers to retire from the space above limited, and establish themselves elsewhere.

§ 3. The Indian tribes within the said limits shall not be considered as subject to, or exclusively connected with, either party. Citizens of the United States and Spanish subjects shall be equally free to trade with them, and to sojourn among them, as far as may be necessary for that purpose; and each of the parties agrees to restrain, by all proper and requisite means, its respective citizens and subjects from exciting the Indians, whether within or without the said limits, from committing hostilities or aggressions of any sort on the subjects or citizens of the other party. The parties agree, moreover, each of them, in all public transactions and communications with the

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Indians, to promote in them a disposition to live in peace and friendship with the other party.

§4. It shall be free for Indians now within the territories of either of the parties to remove to, and settle within, the said limits, within its territories; taking due care not to make it an occasion of war among the Indians, or of animosities in any of them against the other party.

§5. The United States may establish garrisons sufficient, as security against the Indians, and all trading-houses, at any places within the said limits, where garrisons existed at any time under the Spanish Government of Louisiana. And Spain may continue garrisons, for the like purpose, at any places where she had them at the date of her cession to France, and establish trading-houses thereat. Either party may also cause or permit any part of the country within the said limits to be explored and surveyed, with a view to commerce or science.

§6. It shall be free for either of these parties to march troops within the said limits against Indians at war with them, and for the purpose of driving or keeping out invaders or intruders.

ART. 3. It is agreed that, within — years previous to the expiration of the aforesaid term of — years, due provision shall be made for amicably adjusting and tracing the boundary between the territories of the United States westward of the Mississippi, and the territories of His Catholic Majesty; which boundary shall then be established according to the true extent of Louisiana, as ceded by Spain to France, and by France to the United States; uninfluenced, in the smallest degree, or in any manner whatever, by the delay, or by any arrangement or circumstance contained in or resulting from this convention.

ART. 4. Whereas, by the sixth article of the convention signed at Madrid, on the 11th day of August, 1802, it is provided, that, as it had not been possible for the Plenipotentiaries of the two Powers to agree upon a mode by which the Board of Commissioners to be organized in virtue of the same should arbitrate the claims originating from the excesses of foreign cruisers, agents, consuls, or tribunals, in their respective territories, which might be imputable to their two Governments &c; and whereas, such explanations have been had upon the subject of the article aforesaid, as have led to an accord; it is, therefore, agreed that the Board of Commissioners to be organized, as aforesaid, shall have power for the space of eighteen months, from the exchange of ratifications hereof, to hear and determine, in the manner provided as to the other claims in the said convention, all manner of claims of the citizens and subjects of either party, for excesses committed, by foreign cruisers, agents, consuls, or tribunals, in their respective territories, which may be imputable to either Government, according to the principles of justice, the law of nations, or the treaties between the two Powers; and also all other excesses committed, or to be committed, by officers or individuals of either nation, contrary to justice, equity, the law of nations, or the

existing treaties, and for which the claimants may have a right to demand compensation.

ART. 5. It is further agreed, that the respective Governments will pay the sums awarded by the said Commissioners under this convention, and also those which have been or may be awarded under that of the 11th of August, 1803, in manner following:

The Government of the United States will pay all such sums, not exceeding in all, — dollars, which may be awarded as compensation to citizens of the United States, from His Catholic Majesty, in three annual instalments, at the City of Washington; the first instalment to be paid in eighteen months after the exchange of ratifications hereof, or, in case they shall not be so paid, they shall bear an interest of six per cent. per annum, from the time when they became due, until they are actually discharged; and in case the aggregate of the said sums should not amount to the said sum of — dollars, the United States will pay to His Catholic Majesty, within one year after the final liquidation of the claims cognizable by the said board, at the City of Washington, so much as the said aggregate may fall short of the sum above-mentioned; but, on the other hand, if the whole amount of the sums awarded to citizens of the United States should exceed the sum of — dollars, His Catholic Majesty shall pay the surplus, without deduction, to such of the claimants, and at such times and places, as the said Commissioners shall appoint.

The Government of the United States will also pay, without deduction, at the City of Washington, all such sums as may be awarded against them by the said Commissioners for compensation due to Spanish subjects, at such times as shall be appointed in the awards respectively.

This convention shall be ratified within — days after the signing thereof, and the ratifications shall be exchanged within — days after the ratification by the United States, at the City of Washington.

OBSERVATIONS.

The first form of article 1, section 1, is preferred, because it explicitly recognises the right of the United States under the Treaty of St. Ildefonso, and of April 30, 1803, to the river Perdido, which is constructively provided for only in the second form. It is indispensable that the United States be not precluded from such a construction, first, because they consider the right as well founded; secondly, and principally, because it is known that a great proportion of the most valuable lands between the Mississippi and the Perdido have been granted by Spanish officers since the cession was made by Spain. These illicit speculations cannot otherwise be frustrated than by considering the territory as included in the cession made by Spain, and thereby making void all Spanish grants of subsequent date.

It is represented that these grants have been extended, not only to citizens of the United States, but to others whose interest now lies in supporting the claim of Spain to that part of Louisiana,

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in opposition to that of the United States. It is conjectured that M. Laussat himself has entered into these speculations, and that he felt their influence in the declaration made confidently to our Commissioners at New Orleans, that no part of West Florida was included in Louisiana.

In supporting the extent of Louisiana to the Perdido, you will find materials for your use in the extract above referred to, and the other documents annexed, to which you will add the result of your own reflections and researches. The secret treaty between France and Spain, ceding Louisiana west of the Mississippi to Spain, and which has never been printed, may doubtless be obtained at Paris, if not at Madrid, and may be of use in the discussion. From the references in the French Orders of 1764, for the delivery of the Province, it is presumed to be among the archives at New Orleans; and Governor Claiborne has been requested to send a copy of it: but it may not be received in time to be forwarded for your use. In an English work, "*The Life of Chat-ham*," printed in 1793, for J. S. Gordon, London, No. 166, Fleet street, I find a memorial referred to, but not there printed, with the other negotiations preceding the Peace of 1762-'63, expressly on the subjects of the limits of Louisiana, and, as sufficiently appears, with a view to give the Province its extent to the Perdido. You will, perhaps, be able to procure in London or Paris a sight of this document: it probably contains most of the proofs applicable to the question, and will be the more important as proceeding from France; it will strengthen our lien on her seconding our construction of the treaty. The memorial will be the more important still, if it should be found to trace the western limits also of Louisiana, and to give it a corresponding extent on that side. In page 416 and sequel of volume 1, you will see the fact established that the Floridas, including the French part, were ceded to Great Britain as the price for the restoration of Cuba, and that, consequently, the French part now claimed by the United States was a cession purely for the benefit of Spain.

The reasons, beyond the advantages held out in the arrangement itself, which may be addressed to Spain, as prompting a cession of her remaining territory, eastward of the Perdido, will be found in the remarks in the extract aforesaid, in the instructions to Mr. Pinckney and yourself of this 17th day of February last, and in those which have, from time to time, been given to Mr. Pinckney. The Spanish Government cannot but be sensible that the expense of retaining any part of that territory must now more than ever exceed any returns of profit; that, being now more than ever indefensible, it must the more invite hostile expeditions against it from European enemies; and that, whilst in her hands, it must be a constant source of danger to harmony with the United States.

The arrangement made in article second supposes that Louisiana has a very great extent westwardly, and that the policy of Spain will set much value on an interval of desert between

her settlements and those of the United States. In one of the papers now transmitted, you will see the grounds on which our claim may be extended even to the Rio Bravo. By whatever river emptying into the Gulf eastward of that of Spain may with any plausibility commence the western boundary of Louisiana, or however continue it thence to its northern limit, she cannot view the arrangement in any other light than a liberal concession on the part of the United States, to be balanced by an equivalent concession on her part. The limit to the interval on our side is to be considered as the ultimatum, and, consequently, not to be yielded without due efforts to fix a limit more distant from the Mississippi. It is highly important, also, or rather indispensable, that the limit on the Spanish side should not be varied in any manner that will open for Spanish occupancy any part of the waters connected with the Missouri or Mississippi. The range of highlands separating these waters from those of the Rio Bravo, and other waters running westward, presents itself so naturally for the occasion, that you will be able to press it with peculiar force.

To enable you the better to understand the delineations contained in this article, and any others which may be brought into discussion, I forward herewith copies of two maps, and refer you to two others, viz: that of Danville, which you will find either at London or Paris, and, if nowhere else, in Postlewait's Directory, and a map by Mr. —, in 1768, referred to in one of those forwarded. The latter you will doubtless be able to procure at Madrid. The blank for the term of years is not to be filled with more than — years, nor with that number, if a shorter term can be substituted.

The fourth and fifth articles relate to claims against Spain, not provided for by the convention already entered into, and the payment to be assured by the United States. For the reasoning in support of the claims founded on wrongs, proceeding from other than Spanish subjects, I refer you to the letters and instructions to Mr. Pinckney; your communications with him will also furnish the grounds on which the claims resulting from injuries done to our citizens in the Spanish colonies are to be maintained. The reasonableness of a residuary provision for all just claims is implied by the concurrence of Spain in establishing a Board of Commissioners for the cases already submitted to it.

You will not fail to urge on the Spanish Government the sixth article of the Treaty of 1795, as particularly applicable to cases where other than Spanish subjects have committed spoiliations on our vessels and effects within the extent of Spanish jurisdiction, by sea or by land. To justice and the law of nations, this adds the force of a positive stipulation, which cannot be repelled without proving, what cannot be proved, that the Spanish Government used all the means in its power to protect and defend the rights of our citizens; and which cannot be resisted, without pleading, what self-respect ought not to permit to be pleaded, that the sovereignty of His Catholic

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Majesty was under duress from a foreign Power within his own dominions.

The sum of money to be paid by the United States, is, in no event, to exceed two millions of dollars in cash, at the Treasury of the United States, not in public stock, and is to be applied toward the discharge of awards to our citizens; and it is hoped that a much smaller sum will be found sufficient.

If Spain should inflexibly refuse to cede the territory east of the Perdido, no money is to be stipulated. If she should refuse also to relinquish the territory westward of that river, no arrangement is to be made with respect to the territory westward of the Mississippi; and you will limit your negotiations to the claim of redress for the cases of spoliation above described.

If Spain should yield on the subject of the territory westward of the Perdido, and particularly if a comprehensive provision for the claims should be combined therewith, you may admit an arrangement westward of the Mississippi, on the principle of that proposed, with modifications, however, if attainable, varying the degree of concession, on the part of the United States, according to the degree in which Spain may concur in a satisfactory provision for the cases of the territory westward of the Perdido, and of the claims of indemnification.

The United States having sustained a very extensive though indefinite loss, by the unlawful suspension of their right of deposit at New Orleans, and the Spanish Government having admitted the injury by restoring the deposit, it will be fair to avail yourself of this claim in your negotiations, and to let Spain understand that, if no accommodation should result from them, it will remain in force against her.

The term of years, during which the interval between the settlements of the United States and of Spain are to be prohibited, is a consideration of great importance. A term which may appear a moment to a nation stationary, or slowly advancing in its population, will appear an age to a people doubling its population in little more than twenty years; and, consequently, capable in that time of covering with an equal settlement double the territory actually settled. This reflection will suggest the expediency of abridging the continuance of the prohibition as much as the main objects in view will permit. Twenty years are a limit not to be exceeded. Fifteen, or even ten, if the space between the Mississippi and the interval territory be not enlarged, seem to be as much as Spain can reasonably expect. She cannot but be sensible, and you will make use of the idea if you find it prudent so to do, that, before a very long time will elapse, the pressure of our growing population, with events which time does not fail to produce, but are not foreseen, will supersede any arrangements which may now be stipulated, and, consequently, that it will be most prudent to limit them to a period susceptible of some certain calculations.

No final cession is to be made to Spain of any part of the territory on this side of the Rio Bravo,

but in the event of a cession to the United States of the territory east of the Perdido; and, in that event, in case of absolute necessity only, and to an extent that will not deprive the United States of any of the waters running into the Missouri or the Mississippi, or the other waters emptying into the Gulf of Mexico between the Mississippi and the river Colorado, emptying into the bay of St. Bernard.

No guaranty of the Spanish possessions is to be admissible.

This letter is intended for Mr. Pinckney as well as yourself, and as containing the instructions by which the execution of your commission is to be guided.

APRIL 18.

The President being absent, and it being most proper to wait his return, which may be shortly expected, before any final instructions be given as to your immediate destination, after closing your mission to Spain, which may be shortened or spun out, according to circumstances, I recommend that you do not actually leave London until you hear again from me. The moment the President arrives I will communicate to you his views by multiplied conveyances, that you may receive them with as little delay as possible. In the meantime, you will make such preparations as will enable you to depart at a short notice.

Mr. Madison to Messrs. Monroe and Pinckney.

DEPARTMENT OF STATE,
July 8, 1804.

GENTLEMEN: Since the instructions given you on the 15th of April last, further views have been obtained with respect to the interior of Louisiana, and the value which Spain will probably put on such a limitation of our settlements beyond the Mississippi as will keep them for some time at a distance from hers. The President has accordingly become the more anxious that, in the adjustment authorized by those instructions, the terms may be made favorable to the United States. He does not, indeed, absolutely restrain you from yielding to the ultimatum therein fixed, in case it be required by the inflexibility of the Spanish Government, and particularly by the posture and prospect of affairs in Europe; but he is not a little averse to the occlusion, for a very long period, of a very wide space of territory westward of the Mississippi, and equally so to a perpetual relinquishment of any territory whatever eastward of the Rio Bravo. If this river could be made the limit to the Spanish settlements, and the Rio Colorado the limit to which those of the United States may be extended; and if a line northwest or west from the source of whatever river may be taken for the limit of our settlements could be substituted for the ultimatum line running from the source of the Sabine to the junction of the Osages with the Missouri, and thence, northward, parallel with the Mississippi, the interval to be unsettled for a term of years would be defined in a manner peculiarly satisfactory. The degree, however, in which you are to insist on these me-

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liorations of the arrangement, must be regulated by your discretion, and by the effect which the probable course of events will have on the temper and policy of Spain. Should she be engaged in the war, or manifestly threatened with that situation, she cannot fail to be the more anxious for a solid accommodation on all points with the United States; and the more willing to yield, for that purpose, to terms, which, however proper in themselves, might otherwise be rejected by her pride and misapplied jealousy. According to the latest accounts from Great Britain, a revolution in the Ministry, if not a change on the throne, was daily expected; and, from either of those events, an extension of the war to Spain, if not precluded by the less probable event of a speedy peace with France, would be a very natural consequence. It is to be understood that a perpetual relinquishment of the territory between the Rio Bravo and Colorado is not to be made, nor the sum of — dollars paid without the entire cession of the Floridas; nor any money paid in consideration of the acknowledgment by Spain of our title to the territory between the Iberville and the Perdido. But a proportional sum out of the — dollars, may be stipulated for a partial cession of territory eastward of the Perdido. If neither the whole nor part of East Florida can be obtained, it is of importance that the United States should own the territory as far as the Appalachicola, and have a common, if not exclusive right to navigate that stream. I must repeat that great care is to be taken that the relinquishment by Spain of the territories westward of the Perdido be so expressed as to give to the relinquishment of the Spanish title the date of the Treaty of St. Ildefonso. The reason for this was before explained, and is strengthened by recent information, as you will find by the annexed extract of a letter from Governor Claiborne. Other proofs might be added. In any further cession of territory, it may be well so to define it, as to guard as much as possible against grants irregular or incomplete, or made by Spanish officers in contemplation of such a cession.

On entering into conferences with the Spanish Ministry, you will propose and press, in the strongest manner, an agreement that neither Spain nor the United States shall, during the negotiation, strengthen their situation in the territory between the Iberville and the Perdido, and that the navigation of the Mobile shall not be interrupted. An immediate order from the Spanish Government to this effect may be represented as of the greatest importance to the good understanding between the two countries; and that the forbearance of the United States thus long is a striking proof of their sincere desire to maintain it. If such an order should be declined, you will not fail to transmit the earliest information of it, as well as to keep up such representations to that Government on the subject, as will impress it with the tendency of so unreasonable and unfriendly a proceeding to drive the United States into arrangements for balancing the military force of Spain in that quarter, and for exerting their right of navigation

through the Mobile. This navigation has become important, or rather essential; and a refusal of Spain to acquiesce in it must commit the peace of the two nations to the greatest hazard. The posture of things there is already extremely delicate, and calls for the most exemplary moderation and liberality in both the Governments. As a proof of it, I enclose a correspondence between Governor Claiborne and the Spanish Government at Pensacola, on the same subject as that of mine with the Marquis de Yrujo, already transmitted to you.

I have the honor, &c.

JAMES MADISON.

J. MONROE and C. PINCKNEY, Esqs.

The Secretary of State to Mr. Monroe.

DEPARTMENT OF STATE, Oct. 26, 1804.

SIR: The turn which our affairs have taken at Madrid renders it expedient, in the judgment of the President, that you should proceed thither without delay, in execution of the instructions heretofore given, with such alterations and additions as are contained in this letter. You will, of course, make such communications to the British Government on your departure as will guard your mission against injurious misconstructions; and at Paris, on your route, you will avail yourself of all the opportunities there for ascertaining and turning to just account the dispositions of the French Government with respect to the questions depending between the United States and Spain.

As Mr. Pinckney may have left Madrid, and, if not, is on a footing unfavorable for cordial negotiations with the Spanish Ministry, I enclose herewith a new letter of credence and commission, enabling you singly to execute the trust. Should a successor to Mr. Pinckney be appointed, and arrive in time, it will be decided by the President how far he will be associated in the business.

For a view of the circumstances which call for your presence at Madrid, I refer you to the late correspondence here with the Marquis de Yrujo, of which a copy is annexed, and to that with Mr. Pinckney, and to his with Mr. Cevallos, which his files will furnish you. I add also a letter of this date from the Department of State to Mr. Pinckney.

Notwithstanding the rumor which appears to have spread in Europe of an impending rupture between Spain and the United States, there is nothing in the avowed sentiments of the Spanish Government, and certainly nothing in the sound policy of Spain, to justify an inference that she wishes to be no longer at peace with us. It may reasonably be expected, therefore, that you will meet with a friendly reception. In return, you are authorized by the President to give every proper assurance of the desire of the United States to maintain the harmony and to improve the confidence between the two nations; and, with this view, to hasten, by frank elucidations and equitable accommodations, a removal of every source from which discord might arise. You will not

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fail, at the same time, to recollect, in conveying these amicable sentiments, the propriety of leaving the Spanish Government under an impression that they flow neither from a fear of the Spanish Power, nor a belief that Spain sets little value on a continuance of peace with us. If the United States have a deep interest in avoiding war, they know that Spain cannot feel less of interest in avoiding it, and is in no condition, therefore, to extort sacrifices, or to risk the consequences of such an experiment.

If no exchange of ratifications of the convention of August 11, 1802, should have preceded your arrival at Madrid, the President has authorized you to make the exchange; but it is on the expectation that the Spanish ratification will be absolutely unqualified. It must be not only without conditions, but without *protestandos* or declarations of any sort. Rather than admit them, it is thought better to let the convention drop altogether, and to incorporate its provisions with those of a similar kind, making part of the general accommodation with which you are charged. Indeed, if there be a prospect of effecting this accommodation without delay, there may be an advantage in laying aside the convention of 1802, as there will be an opportunity of giving to some of its articles both more precision and more comprehension. You will find some hints on this subject in the letters heretofore written to Mr. Pinckney, and may derive others from similar provisions in former conventions.

The spoliation by French citizens chargeable on Spanish responsibility will be an important topic in your negotiations, whether the convention of 1802 be separately carried into effect, or be consolidated with a new one.

It is clear, as has been distinctly and repeatedly stated in the instructions given to Mr. Pinckney, that where the capturing vessels were equipped in Spanish ports, or the prizes made or condemned within Spanish jurisdiction, Spain is answerable for them to the United States. This, as a general principle, has not been denied. But two pleas are offered, as rendering the principle inapplicable to the claims of our citizens. One is, that the circumstances in which Spain was placed disabled her from controlling the wrongs done by French citizens; the other, that the convention between the United States and France having relinquished the claim of indemnities against the latter, Spain became thereby absolved also; inasmuch as the relinquishment to France would otherwise be so far frustrated by her obligation to satisfy Spain for the indemnities paid by her to the United States.

The first plea alone was advanced in the early stages of the discussion. The second was pretty certainly suggested by the Spanish Minister here, who, for that reason, may be the more anxious to see it prevail; and it has been abetted by the rescripts of several American lawyers, obtained, doubtless, by the same Minister, on a hypothetical case, so stated as to educe the desired opinion.

With respect to the first plea, it is too little consistent with the honor of Spain to be perse-

vered in, and has been but feebly urged since the second occurred. It would require, besides, from Spain satisfactory proof that she made every reasonable effort to maintain her own authority against the coercive intrusion of that of France. No such proof has been offered or attempted. In truth, no serious effort appears to have been made; and it may fairly be presumed that the pliability of Spain was either the result of a positive understanding with France, or a compliance offered as a price for some equivalent advantage.

With respect to the second plea, so far as it respects the opinion of the lawyers, I refer, for the light in which it ought to be regarded, to the observations made in my letter of ——— to Mr. Pinckney.

In its merits, the plea is equally unsustainable. In the first place, some of the French citizens, whose irregularities are charged on Spain, were private citizens, having no commissions from France, in whose proceedings France cannot be supposed to have taken any interest, and for which, therefore, she might justly refuse to be answerable. In the next place, others of the wrongdoers, though once commissioned by France, may at the time have been without commissions, or have retained dead commissions only. For these, also, as in fact private citizens, France may refuse to be answerable. Again, in cases where the captures are stated to have been numerous, being made within the territorial jurisdiction of Spain, were controllable by Spain, and probably not patronised by France, no sufficient ground appears on which France could be made chargeable.

The responsibility of Spain in this last case is the more direct and positive, as she is bound, by the sixth article of the treaty of October, 1795, to use all her efforts to recover and restore to the right owners their vessels and effects, which may have been taken within the extent of her jurisdiction by sea or land, whether they are at war or not with the Power whose subjects have taken possession of the said effects.

Lastly, therefore, the cases for which France is eventually liable, because presumably a party to them, are those only in which her commissioned cruisers on the high seas were the captors, and her agents in the Spanish ports the instruments of condemnation; the several other cases, with such as may have happened between the convention with France of September 30, 1801, and that with Spain of August 11, 1802, being as unsustainable against France, without the principle on which the Spanish plea is founded.

As to this last class of cases, proceeding from French officers and French agents, as well as every other which can be traced to the sanction and support of France, it is certain that eventual resort may be had to France for indemnification.

But it is no less clear that this eventual remedy does not interfere with the right of the United States to resort in the first instance to Spain, as in the first instance, and in the ordinary course, responsible for the injuries committed. French citizens, like all other aliens within Spanish ju-

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risdiction, are, for the time and place, Spanish subjects. As such they are regarded by Spain herself; as such they are regarded by other nations, and as such Spain is answerable for their conduct to other nations in the same manner as she is answerable for that of her permanent subjects.

Could it be shown, therefore, that France had been released from her responsibility, it would not follow that the release of Spain was involved in that of France. France would only have been released from her eventual responsibility, (where it even existed,) whilst Spain would have remained under her immediate responsibility. Both may be considered as bound to indemnify the United States; Spain as the primary, France as the secondary debtor; Spain as the principal, France as a surety; and the release of France, consequently, is no more releasing Spain, than the release of a surety would release the principal debtor. This view of the subject derives force from the consideration that the United States have, from the beginning, addressed their claims to Spain as primarily and principally bound to satisfy them.

But to cut up this plea by the roots, it may be affirmed that no such release has been given by the United States to France. The convention, from which the plea is derived, expressly binds France, in the third article, to indemnification for all captures which might be subsequent to the date of the instrument, and also in cases where no definitive condemnation had, at that date, taken place. Now, the condemnations by French agents in Spanish ports are neither definitive condemnations, nor any legal condemnations at all. The degree of authority and forms of proceeding meant by France to be intrusted to her commercial agents in foreign countries, appear to have been different at different times; and it may deserve inquiry what they were at the respective dates of the cases in question. By a law of the Republic of October, 1795, it would seem that the authority was first granted, and in an unconditional form. By a law of their Consular Government, however, of 8 Germinal, year 8, the same authority was granted, with the following modification: "Et dans le cas où le présent règlement pourra recevoir son exécution, ils rempliront toutes les fonctions dont il charge l'officier d'administration des parts de la république, en se faisant assister de deux assesseurs, choisis, s'il est possible, parmi les citoyens François immatriculés et établis dans le lieu de la résidence de ces commissaires." The proviso implied by the expression "et dans le cas où le présent règlement pourra recevoir son exécution," combined with the preceding reference to treaties, &c., will show that the authority was not to be exercised without the consent of the foreign country where the trial was to be had. And by a Spanish regulation in 1799, referred to, and enclosed in my letter to Mr. Pinckney of 8th of March, 1803, it is expressly declared, that the jurisdiction of the French agents in Spanish ports was not admitted by the Spanish Government. It will deserve in-

quiry, also, in what light France herself may view the condemnations assumed by her agents in Spanish ports. From some information lately received from Mr. Skipwith, it may be inferred that they are not classed with those relinquished to her by the United States, and, if not mere nullities, are at least within the exceptions to the relinquishment stated in the third article of the convention of 1801; and, consequently, were it possible for Spain to prove the duress she alleges, would be eventually chargeable on France, according to her own view of the subject, so far as her judicial regulations may have been pursued by the individual sufferers.

In fine, the proceedings in question were either valid or not valid. If not valid, the release of France cannot be applicable to them, and the plea of Spain falls. If valid, the validity must proceed from the sanction given to them by Spain herself, since, without that sanction, the French authority could not operate within the sovereignty of Spain; and with that sanction, the proceedings would be virtually the acts of Spain, and the more undeniably chargeable to her account.

Thus, in every view of the subject, Spain will find it impossible to evade the obligation to include, in a just and honorable settlement with the United States, the French spoliations charged on her, as well as those committed by Spanish subjects.

Still her pride may adhere to objections which have been so pertinaciously, though with such little reason, urged by her. To spare this, her retreat may be covered by general expressions confounding the French with the other spoliations; or it may, if necessary, be still more effectually spared by a tacit relinquishment, at the same time, on the part of the United States, of the indemnities for the interruption of the deposit at New Orleans, which, being an express violation of treaty, forms a claim against Spain which she cannot controvert, and of which the Government of the United States has never lost sight. In such a relinquishment, it will be desirable, if practicable, to except such of the few claims for losses sustained by individuals, as can be properly specified and verified; limiting, thereby, the relinquishment to the general injury done to the body of the people by the unlawful obstruction of their commerce. A reparation for this injury is clearly due to the American nation, and Spain has no reason to expect that it will be abandoned without a valuable consideration of some kind or other.

For your guide in your general negotiations, you will take the instructions heretofore addressed jointly to Mr. Pinckney and yourself, with one alteration, however, which is authorized by the President. In case the Spanish Government shall refuse to cede the territory eastward of the Perdido, and shall require, as indispensable to an acknowledgment of our title to the territory westward of that river, an acknowledgment on our part that, in ultimately establishing the western boundary of Louisiana, the pretensions of the United States shall not go beyond the proposed

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western limit to the interval of desert, to wit: the river Colorado, a line thence to the source of Red river, thence, along the highlands, &c., you are authorized, after reasonable endeavors otherwise to effect your object, to acquiesce in the acknowledgment so required.

Mr. Madison to Mr. Monroe.

DEPARTMENT OF STATE, May 4, 1805.

SIR: I have just received your letter of the 2d of February, and one of the same date, signed by Mr. Pinckney also, with the communications attached to them. Those of the preceding dates, of the 27th of November, 16th of December, and 19th of January, had been previously received.

Observing that, in the project delivered to the Spanish Government, you have omitted the provision contained in the plan for a general accommodation, transmitted in my letter of April 15, 1804, for claims subsequent to the date of the convention of August, 1802, I lose no time in referring you to that letter, and to another of the 26th of October following, in which the course to be pursued is marked out, and in reminding you of the great importance of not losing sight of that class of claims which are of great amount, are daily increasing, and which ought to be embraced to as late a date as possible. Should your negotiation, therefore, be still open, I recommend this subject to your particular attention. Should the negotiations have been successfully closed, it will be proper for you to procure, if it can be done, a supplemental article for the purpose. If this cannot be done, or if the negotiations should have failed, the instructions adapted to that state of things will be given to Mr. Bowdoin, as soon as it shall be known here.

I recommend, in like manner, to your attention the remarks contained in my letter of March 22, 1803, to Mr. Pinckney, on the modifications proper to be given to the text of a convention; and the remark in my letter of October 26, 1804, relative to the Spanish garrison, which alone may be permitted to continue.

With high consideration, &c.,

JAMES MADISON.

JAMES MONROE, Esq., *Madrid*.

Mr. Madison to Mr. Monroe.

DEPARTMENT OF STATE,
May 23, 1805.

SIR: I have duly received the several communications transmitted by Mr. Pinckney and yourself, under date of the 1st March last. I have also received from General Armstrong copies of his letters to you of the 12th and 18th of March. The passages in this last, in cipher, having not been copied into that used by this Department with General Armstrong, remain locked up, but probably do not affect the general tenor of this letter.

From these communications, it appears that France has arranged herself on the side of Spain in such a manner that Spain will neither be dis-

posed, nor be permitted to bend to our claims, either with respect to West Florida or the French spoliations. What part France may take in relation to the western boundary of Louisiana seems not to have been disclosed. From the silence on that point, in Talleyrand's note of November 8th, in answer to yours, in which the claim of the United States to the Rio Bravo is expressly asserted, and from the confidential acknowledgment of that boundary by M. Laussat to Governor Claiborne and General Wilkinson, it might be expected that, on this important point, France would side with us against Spain. Should this be the case, it is hoped, notwithstanding the unfavorable posture of the negotiation, that there will be room to give it some such result as was contemplated. But there is so little reliance to be placed on the temper and views of France, as lately developed, that a failure of your efforts ought to be anticipated. The alternative presented by this event is that of war, or a state of things guarding against war for the present and leaving in vigor our claims to be hereafter effectuated. Against war, if to be safely and honorably avoided, the considerations are obvious and powerful. As it is a question which belongs to Congress, not to the Executive, that consideration alone forbids any step, on the part of the latter, which would commit the nation, and so far take from the Legislature the free exercise of its power. And it may be fairly presumed, considering the daily increase of our faculties for a successful assertion of our rights by force, that neither the nation nor its representatives would prefer a resort to arms to a state of things which would avoid it, without hazarding our rights or our reputation. The two essential articles in such a state of things are, 1st. A forbearance on the part of Spain, as well as of the United States, to augment their settlements, or to strengthen in any manner their military establishments within the controverted limits; 2dly. Not to obstruct the free communication from our territories through the Mobile and other rivers mouthing in the Gulf of Mexico, or through the Mobile at least.

In the first of these articles must be included a forbearance on the part of Spain to introduce slaves, as well as free persons, not only as in one sense augmenting her settlements, but as facilitating a clandestine introduction of them, already complained of, into the territories of the United States. It can hardly be supposed that Spain will object to this article, even with such an explanation of it; and if the language of the French Minister here be any test of the sentiments of his Government, it may be expected that France will favor the arrangement. This Minister has repeatedly and strongly declared that, until all questions concerning the boundary of Louisiana should be adjusted, a *statu quo* was the natural and just policy to be observed.

The second article is, perhaps, not less essential as a precaution for maintaining peace. Every moment of delay threatens collisions which lead to war. The necessity of that channel for the exports and imports of the increasing settlements on the Mobile, above the Florida limit, and for

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conveying our public stores to the military stations in that quarter, prove at once the reasonableness of this demand and its close connexion with the maintenance of peace. You will find by the enclosed correspondence between Governor Claiborne and the Marquis de Casa Calvo, that the attention of the latter has been drawn to the subject, and that it will have been thence transmitted to the Spanish Government. It is proper for you to know that the existing regulations of the United States permit the settlements in the district of Baton Rouge, on the Mississippi, to navigate this river, with the exception, only, as to the introduction of slaves and armed vessels; exceptions having reference to the very objects of the regulations now in question.

I forbear to repeat the grounds on which the right of the United States to the use of those rivers is to be placed. They are already in the archives of the Legation at Madrid. More effect, however, is to be expected from the necessity which a refusal of the navigation will impose on the United States to enforce their claim, than from any appeal to the principles which support it; and this necessity must be permitted to impress itself fully on the Spanish Councils. The influence which France will have in this instance, as in all others, will make it worth while to learn the doctrine she has maintained with respect to the navigation of waters flowing through different jurisdictions. It is pretty certain that she has been led to assert ours, in relation to the Scheldt, and probably to the Rhine, and perhaps other rivers.

The silence of your communications with respect to the instructions in my letter of July 8th, 1804, to make the subject of the present a part of your conference with the Spanish Government, leaves it uncertain what particular disposition may have been manifested, and whether any orders, such as were required, have been transmitted. The inference that we draw is, that you were either induced to decline pressing them, or that the requisition did not succeed. Whatever may have been the case, you will consider it as a charge from the President, in the event pre-supposed, of a failure in your general negotiation, to pursue, without delay, the course herein prescribed. Should you fail in this also, you will lose no time in transmitting the result, taking care not to commit the Government of the United States in any respect, nor to alarm Spain into hostile measures or preparations further than may be inevitable. Should you succeed in what is here proposed, you will, in that case, also give the earliest notice, without precluding the United States from any course not inconsistent with the temporary arrangement formed, and leaving Spain under the impression that the arrangement will probably guaranty a continuance of peace.

In the instructions of October 26th, 1804, it was left discretionary to accept a ratification of the convention of August, 1802, or to incorporate it with the general one committed to your negotiation, with an intimation that it might be best to do the latter, in case but little delay in giving effect

to the Convention of 1802 should be thereby incurred. The delay actually incurred must have led you to take the first course, if left to your option by Spain. From the spirit, however, of Mr. Cevallos's observations in his letter of —, there is little probability that a ratification would be given, unshackled by conditions, which you were instructed to reject. It only remains now, therefore, to observe to you, that these conditions continue to be regarded by the President as absolutely inadmissible. The ratification, as already signified to you, is not to be accepted with any condition or qualification whatever, beyond such an arrangement as is explained in the letter of October 15, 1804, of which an abstract is repeated from the Department of State to the Marquis de Yrujo, for affording a moderate time to Spanish subjects to produce their claims. If a ratification, thus unshackled, be within your option, the President deems it proper that you should accept and transmit it, although none of the other objects committed to you should have been attained. Besides the pledge which a partial accommodation may prove for a more comprehensive adjustment, it is to be considered that the provision therein made for a considerable portion of our citizens who are claimants, is due both to their interests and to the sanction given to it by the Senate, and that the manner in which the sixth article describes the suspended claims, is favorable to the principle on which they are founded.

This letter will be so addressed, that it may be opened by Mr. Bowdoin, in case of your departure previous to his arrival, or by Mr. Ewing, in case of his reaching Madrid before Mr. Bowdoin: and either of these gentlemen is hereby authorized, in pursuance of the instructions here given relative to the Convention of August, 1802, to arrange and accept its ratification. I have the honor, &c.

JAMES MADISON.

JAMES MONROE, Esq.

V.—Letter from Mr. Monroe to Mr. Talleyrand; a letter from M. Talleyrand to Mr. Armstrong; and a letter from Mr. Armstrong to Mr. Monroe.

Mr. Monroe to M. Talleyrand.

PARIS, November 8, 1804.

SIR: Before the conclusion of the late treaty between the United States and France, your Excellency will recollect that it was an object of the President, to acquire of Spain, by amicable arrangement, Florida; it being that portion of her territory which she held eastward of the Mississippi. It was also his object, after the conclusion of that treaty, not that it was pressed by such imperious considerations as before, but that, as it would contribute to remove all cause of uneasiness and jealousy between the two Powers, they might adopt and harmonize in future in such a system of policy as might secure to them peace, and give additional protection to their possessions in that quarter, especially to those of Spain. In the conferences which produced the treaty above-mentioned, the good offices of His Imperial Majesty were engaged to the United States in any

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negotiation which the President might commence with the Catholic King, for the acquisition of Florida. The same assurance was renewed after the conclusion of the treaty, though it was intimated that that was not a suitable time for the commencement of such a negotiation. It was, on that intimation, as your Excellency will also recollect, at a moment when I was about to set out for Spain in pursuit of the object, (the then recent orders of the President permitting it,) that I postponed my journey thither, and took a different position. The proposed negotiation with Spain was, in consequence, and has since remained, suspended; and it is in obedience to late orders from my Government that I am now so far on my way to Madrid on that subject, and that Mr. Livingston has requested the good offices of the Emperor in support of it. It is proper here to remark, that, since the epoch here referred to, the treaty then just concluded between the United States and France has been carried into effect, in its great points, with that scrupulous attention to good faith which does to both parties the highest honor. Their conduct in that transaction gives to each a pledge for the integrity which is to prevail in their future intercourse. I may be permitted to add, that, as I declined my visit to Spain at that epoch, the more readily to give an opportunity for the complete execution of that treaty, so, now that it is carried into effect, I undertake it with the greater pleasure, since it confirms me in the confidence before entertained, of the support which would be given to it by His Imperial Majesty.

The President has been induced to adopt this measure at this time, by considerations the most urgent. As these are inseparably connected with the proposed negotiation, indeed, form, in part, the object of it, it is due to the friendship subsisting between our Governments, and to the candor which the President will never fail to observe in his transactions with the Emperor, to give you a distinct idea of them. They will, I doubt not, satisfy you that the President has heretofore shown a sincere desire to cultivate the friendship of the Catholic King, and that the attempt which he now makes to preserve that relation is a new and signal proof of that disposition.

Since the treaty between the United States and France, whereby Louisiana was ceded to the former, a question has arisen between those States and Spain, relative to the boundaries of the ceded territory. It is understood that the Government of Spain entertains an idea that that cession comprises only that portion of Louisiana which was ceded to it by France in 1762; that it does not comprise that portion also which was ceded by her, at the same time, to Great Britain, distinguished, while in her possession, by the name of West Florida. This pretension of the Court of Spain cannot, it is presumed, be supported by even the color of an argument. Had that been the intention of the parties in the Treaty of St. Ildefonso, it would have been easy to have provided for it. The idea was a simple one, which a few plain words would have expressed. But, the language of the article referred to conveys a

very different sentiment. We find in it nothing which countenances a presumption that the Emperor meant to retake from Spain only a portion of Louisiana, or to refer to it in a dismembered state. It was natural to suppose, in accepting a retrocession of that province from a Power possessed of the whole, that he would take it entire, such as it was when France possessed it. Accordingly, we find that the terms of the article making the cession are as full and explicit to that object as it was possible to use. It is not stipulated that Spain should cede to France that portion of Louisiana only which she had received from France, or that West Florida should be excepted from the cession.

It is, on the contrary, stipulated that she shall cede it as it was when France possessed it; that is, such as it was before it was dismembered by the cessions afterwards made to Spain by Great Britain; that she should cede it with the same extent that it now has in the hands of Spain; that is, entire, which it became by the treaty of 1783, whereby West Florida was ceded by Great Britain to Spain; such as it is according to subsequent treaties between Spain and other Powers: a stipulation which does honor to His Catholic Majesty, since it proves that, in making the cession to France, he intended to cede only what he had a right to cede; that he recollected the treaty which he had concluded with the United States in 1795, knew the extent of its obligations, and was resolved to execute them with good faith. Your Excellency will receive, within, a paper containing an examination of the boundaries of Louisiana, which, it is presumed, proves incontestably the doctrine above advanced, as also that the river Perdido is the ancient, and, of course, present boundary of that province to the east and the Rio Bravo to the west.

The United States have other causes of complaint against Spain, of a serious import. In the course of the last war many aggressions were committed, under the authority of Spain, but, as it is presumed, without its sanction, on the commerce of the United States. Her ships of war and privateers took many of their vessels in Europe and America, carried them into her ports, detained and condemned them, under pretexes which cannot be justified. The injury sustained by this proceeding was great and extensive, for which it is the duty of the President to obtain for the sufferers an adequate reparation. A convention was entered into at Madrid, about two years since, between the two Powers, which provided a partial remedy for these injuries. The greatest object, however, was left open for future arrangement. It was owing to that consideration, and to a knowledge that the principal cause of variance was unprovided for, that the negotiation was, in truth, unfinished; that neither Government took any interest in ratifying or executing that convention. The whole subject, therefore, now lies open for discussion, and it is very much desired to conclude it on such fair principles as may be satisfactory to His Catholic Majesty, while it enables the President to vindicate the character of his Administration, in obtaining

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for American claimants the justice to which they are entitled.

The occlusion of the river Mississippi, about two years ago, contrary not only to the spirit but to the express stipulation of the Treaty of 1795 between the United States and Spain, was an act which exposed to essential injury the interest of the Western inhabitants of those States, while it could not be considered otherwise than as a high indignity to their Government. His Catholic Majesty did not hesitate to disavow the act, when complained of by the American Minister at Madrid. This disavowal made some atonement to the violated honor of the Government, but no reparation for the injury which has been sustained by individuals. A reasonable, but adequate, reparation is still due on that account, and it is expected that His Catholic Majesty will see the justice and propriety of making it.

These circumstances have produced an interesting crisis in the political relation of the United States and Spain, which it is the sincere desire of the President to remove by fair and amicable arrangement. If the negotiation which is about to be commenced by his order does not terminate in that result, it will be owing altogether to the Government of Spain. The measure which is now adopted, the negotiation which is invited, is a convincing proof of the sincerity and good faith with which the President seeks to preserve the relations of friendship between the two Powers. In the pursuit of its objects, no unreasonable pretension is entertained, no unjust demand will be made. On the subject of boundaries, although Congress, on a thorough conviction of its rights, authorized the taking immediate possession of Louisiana, according to its ancient limits, and, of course, to the river Perdido, to the East, yet the President, from motives of respect to the Catholic King, postponed the execution of the measure, to give time for amicable explanation with his Government, in full confidence that they will produce their desired effect. In respect to aggressions on our commerce, and other injuries, it cannot be doubted that a suitable indemnity will be made for them. The cession of Florida is a question which rests on different ground. The policy of that measure, and the conditions of it, in case the policy is admitted, are points to be decided by each Government for itself, from a view of its interest and other circumstances. Should the cession be made, and the other points be adjusted, there is no reason why the peace and harmony of the two nations should not be perpetual: there would remain no cause of jealousy between them—no point of collision. Possessed of ample territory to satisfy their growing population for ages to come, the United States would be left at liberty to pursue their interior arrangements without apprehending the interference of, or having the disposition to interfere with, their neighbors. Such a system of policy on their part would contribute in a very eminent degree to the security of the vast dominions of Spain to the south of us. To Spain, it is presumed that the territory is of but little importance: in itself it is of none, as it is a barren tract. If she retains

it, it must be as a port for troops, to be placed there in opposition to us—a measure which tends to provoke hostility and lead to war. The Havana is a port which answers more effectually every object which she could contemplate from this, while it is free from all the objections that are applicable to the latter. Being an island, it is less assailable by a foreign Power. Situated in the Gulf of Mexico, it furnishes the means of giving all the protection to her other possessions that she could desire; and by uniting her whole force at one point, increasing her means of defence against attack, or of annoying her enemies in time of war. It is earnestly hoped that the Catholic King will take a dispassionate view of these circumstances, and of the relative situation of the two Powers, and meet the President in a suitable provision for their future friendship. Should he, however, be disposed to pursue a different policy, on him will the responsibility rest for the consequences.

The relation which has subsisted invariably between His Imperial Majesty and the Government which I have the honor to represent has been of the most friendly character. It is on the knowledge of that fact, and the satisfactory evidence which it furnishes, that the Emperor takes an interest in the welfare of the United States; it is on the promise above adverted to, made on his part, to support with his good offices any negotiation which the President might commence with the Court of Spain for the acquisition of Florida; as also on the firm belief that the attainment of that object, with the amicable adjustment of all subsisting differences between the United States and Spain, must be advantageous to France, that his good offices have been and are now requested in support of that negotiation.

My mission to Spain being extraordinary, is also temporary. As soon as its objects are accomplished, it is my duty to return to London, which I shall do through this metropolis, when I hope to have the honor and pleasure of being presented again to His Imperial Majesty, and of acknowledging in person his friendly offices to my Government and country in a transaction of high importance to its interests, which the President has thought fit to commit in part to my agency.

I beg your Excellency to accept the assurance of my high consideration.

M. Talleyrand to General Armstrong.

PARIS, December 21, 1804.

SIR: I had the honor, in Brumaire last, to inform Mr. Livingston that I would submit to the inspection of His Imperial Majesty the letters he addressed to me relative to the motives of Mr. Monroe's journey to Spain, and some discussions between the Court of Madrid and the United States.

Among the observations made on this subject by Messrs. Livingston and Monroe, His Imperial Majesty has been obliged to give particular attention to those bearing on the discussions, of which the object is peculiarly interesting to the French Government. He has perceived that he could not have been a stranger to the examination of these

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discussions, since they grew out of the treaty by which France has ceded Louisiana to the United States; and His Majesty has thought that an explanation, made with that fidelity which characterizes him, on the eastern boundaries of the ceded territory, would put an end to the differences to which this cession has given rise.

France, in giving up Louisiana to the United States, transferred to them all the rights over that colony which she had acquired from Spain; she could not, nor did she wish to cede any other; and, that no room might be left for doubt in this respect, she repeated, in her treaty of 30th April, 1803, the literal expressions of the Treaty of St. Ildefonso, by which she had acquired that colony two years before.

Now it was stipulated, in her treaty of the year 1801, that the acquisition of Louisiana by France was a retrocession; that is to say, that Spain restored to France what she had received from her in 1762. At that period she had received the territory bounded on the east by the Mississippi, the river Iberville, the lakes Maurepas and Pontchartrain; the same day France ceded to England, by the preliminaries of peace, all the territory to the eastward. Of this Spain had received no part, and, could, therefore, give none back to France.

All the territory lying to the eastward of the Mississippi and the river Iberville, and south of the 32d degree of north latitude, bears the name of Florida. It has been constantly designated in that way during the time that Spain held it; it bears the same in the treaties of limits between Spain and the United States; and, in different notes of Mr. Livingston of a later date than the treaty of retrocession, in which the name of Louisiana is given to the territory on the west side of the Mississippi; of Florida to that on the east of it.

According to the designation, thus consecrated by time, and even prior to the period when Spain began to possess the whole territory between the 31st degree, the Mississippi, and the sea, this country ought, in good faith and justice, to be distinguished from Louisiana.

Your Excellency knows that, before the preliminaries of 1762, confirmed by the Treaty of 1763, the French possessions, situated near the Mississippi, extended as far from the east of this river, towards the Ohio and the Illinois, as in the quarters of the Mobile; and you must think it as unnatural, after all the changes of sovereignty which that part of America has undergone, to give the name of Louisiana to the district of Mobile, as to the territory more to the north on the same bank of the river, which formerly belonged to France.

These observations, sir, will be sufficient to dispel every kind of doubt, with regard to the extent of the retrocession made by Spain to France, in the month of Vendemiaire, year 9. It was under this impression that the French and Spanish plenipotentiaries negotiated, and it was under this impression that I have since had occasion to give the necessary explanations when a project was formed to take possession of it. I have laid before His Imperial Majesty the negotiations of Mad-

rid which preceded the Treaty of 1801, and His Majesty is convinced that, during the whole of these negotiations, the Spanish Government has constantly refused to cede any part of the Floridas, even from the Mississippi to the Mobile.

His Imperial Majesty has, moreover, authorized me to declare to you, that, at the beginning of the year 11, General Bournonville was charged to open a new negotiation with Spain for the acquisition of the Floridas. This project, which has not been followed by any treaty, is an evident proof that France had not acquired, by the treaty retroceding Louisiana, the country east of the Mississippi.

The candor of those observations proves to you, sir, how much value His Majesty attaches to the maintenance of a good understanding between two Powers, to whom France is united by connexions so intimate and so numerous. His Majesty, called upon to give explanations on a question which interested France directly, persuades himself that they will leave no ground of misunderstanding between the United States and Spain; and that these two Powers, animated, as they ought to be, by the sentiments of friendship which their vicinity and their position render so necessary, will be able to agree with the same facility on the other subjects of their discussion.

This result His Imperial Majesty will learn with real interest. He saw with pain the United States commence their differences with Spain in an unusual manner, and conduct themselves towards the Floridas by acts of violence, which not being founded in right, could have no other effect but to injure its lawful owners. Such an aggression gave the more surprise to His Majesty, because the United States seemed in this measure, to avail themselves of their treaty with France as an authority for their proceedings, and because he could scarcely reconcile, with the just opinion which he entertains of the wisdom and fidelity of the Federal Government, a course of proceedings, which nothing can authorize, towards a Power which has long occupied, and still occupies, one of the first ranks in Europe.

But the Federal Government having entered the path of negotiation, and the question which divided the two Powers being cleared up, there is reason to hope they will easily agree on the other points; and this His Majesty, from the sincere interest which he feels for the equal prosperity of the two nations, ardently desires.

Accept, sir, the assurance of my high consideration,
C. M. TALLEYRAND.

Extract of a letter from General Armstrong, Minister Plenipotentiary of the United States at Paris, to Mr. Monroe, Minister Extraordinary and Plenipotentiary of the same, dated

PARIS, *March 12, 1804.*

The moment I received your letters of the 15th and 26th February, I took measures to sound this Government on the present posture of things at Madrid, which, on the authority of your communication, I represented as strongly indicating a rupture between the United States and Spain.

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Their manner of receiving this information, with the sentiments which they made no scruple to avow in relation to the subject generally, decided me at once against either submitting your correspondence with Cevallos, or submitting anything of my own for it—perceiving clearly that the effect of such communication would be to draw from them some new declaration friendly to the pretensions of Spain, and calculated merely to keep up the tone of her councils. The following sketch of what passed will enable you to judge how far this conclusion was correct, or otherwise.

On the subject of indemnity for the suspended right of deposit, (professing to know nothing of the ground on which the interruption had been given,) they would offer no opinion. On that of reparation for spoliation committed on our commerce by Frenchmen within the territory of His Catholic Majesty, they are equally prompt and decisive, declaring that our claim, having nothing of solidity in it, must be abandoned.

With regard to boundary, we have, they said, already given an opinion, and see no cause to change it. To the question, What would be the course of this Government in the event of a rupture between us and Spain? they answered, We can neither doubt nor hesitate—we must take part with Spain; and our note of the 30th Frimaire was intended to communicate and impress this idea.

Extract of a letter from the same to the same, dated

PARIS, *March 18, 1805.*

I received your favor of the first instant by the Preble. Another experiment has been made, but without producing any result propitious to our objects. Nay, the more this subject is discussed, the more determined are they in maintaining the doctrines and pursuing the conduct indicated in my letter of the 12th. In this explanation, three points were fully and distinctly, but cautiously, urged: 1st. The probability of an immediate rupture between Spain and the United States; 2d. The ill consequences of such an event to Spain directly, and to France indirectly, as her ally; and, 3d. Its tendency to promote the general views of Great Britain, though no closer political connexion between her and us were induced by it.

Extract of a letter from the same to the same, dated

PARIS, *April 1, 1805.*

Your letter, of the 12th reached me yesterday. No material change of opinion or conduct has taken place here with regard to your business. A long and querulous note has been put in by the Spanish Chargé d'Affaires, (Santivanes,) stating the claims made by you, and the arguments employed in support of them, and soliciting from this Government its exposition of the Treaties of 1801 and 1803 on the several points in controversy. This note had not been answered on the 30th ult., and, from some circumstances, I suspect that there is no intention of answering it promptly.

VI.—*Correspondence between Messrs. Monroe and Pinckney and the Spanish Government.*

Messrs. Monroe and Pinckney to Mr. Cevallos.

ARANJUEZ, *Jan. 28, 1805.*

SIR: It is the sincere desire of the President to establish the relations between the United States and Spain on a footing of permanent friendship. As a signal proof of that disposition, he has sent an extraordinary mission to His Catholic Majesty, with full power, in conjunction with their Minister Plenipotentiary at Madrid, to enter into such arrangements, on just and equal principles, as may be best adapted to the object. The situation of the two countries, at this time, required such an effort on his part, and it is our wish, as it is our duty, to do everything in our power to carry it into effect.

It is proper to examine, impartially, the several points which are depending between our Governments. To make their friendship perpetual, every cause of complaint and inquietude should be brought into view, and amicably settled. For this purpose, it is necessary to ascertain their respective rights in each case, since thereby an unerring rule will be established, by which this adjustment may be made, and their future harmony secured. No just Government will ever demand anything which will not bear the test of that rule: no just Government will ever refuse to discharge an obligation which it imposes. We will proceed to this inquiry, in full confidence that both our Governments are animated with the same zeal to do justice, with the same desire to cherish the friendly relations which have heretofore subsisted between them.

In the course of the last war, many aggressions were committed on the peaceful, and, as it is presumed, lawful commerce of the United States, to the great injury of their citizens, within the territory and jurisdiction of Spain, for which they are entitled to compensation. It cannot be doubted but that Spain is responsible for the injuries, in all cases where the condemnation was contrary to the law of nations, the subsisting treaty between the two Powers, and those principles of justice which are recognised and respected by other nations. It is to be regretted that a perfect accord has not yet taken place between our Governments on the mode of adjusting all the claims proceeding from this cause. It is, however, matter of much satisfaction to observe, that they have gone so far in the establishment of just principles, and approached so near in sentiments, as to justify the expectation that all difficulties will now be removed. The discussions which have already taken place on this subject have too fully illustrated its merits to require anything to be added on that point at present. We observe, with pleasure, that the President reposes too much confidence in the high character of His Majesty, which is distinguished by a sacred regard to justice, to doubt his agreement to whatever it dictates. The proposition which we have the honor to make to your Excellency on this point rests on that basis, and will, therefore, we flatter ourselves, receive his

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sanction. Your Excellency will find that, in the terms of payment of such sums as may be awarded, a new accommodation is proposed, which is equally a proof of the disposition of our Government to conciliate the views and interests of His Catholic Majesty in this transaction.

The suppression of the right of deposit at New Orleans, by the Intendant of His Majesty, in the Winter of 1802-'3, contrary to the Treaty of 1795, to the great injury of citizens of the United States who inhabit the territory which is bounded by the Mississippi, and the waters emptying into it, is also an act for which they are entitled to reparation. By restoring the deposit, on the complaint of the President, His Majesty gave a satisfactory proof of his strict regard to the obligations of treaties, and the principles of justice; but, by so doing, the injuries which had been sustained by individuals had not been redressed, nor were the just views of His Majesty in that respect completely fulfilled. It is presumed that His Majesty will not hesitate to allow an adequate indemnity for the losses which were sustained by this act of his Intendant. It is one of the objects of the enclosed project to provide for them.

The above are the injuries which have been received by citizens of the United States, for which it is proposed to provide a suitable compensation. In seeking justice, however, it is equally the duty of their Government to render it. It is possible that His Majesty's subjects may have received injuries within the territory or jurisdiction of the United States, or by their officers elsewhere, for which those States are also responsible. It has been the invariable effort of their Government to preserve the best understanding with His Catholic Majesty, by the faithful observance of every duty imposed by the law of nations and the subsisting treaty between them, in their political and social intercourse. If such injuries have been rendered, it is the earnest wish of the President that just reparation should be made for them.

For the fair and amicable adjustment of all such claims on both sides, it is proposed to establish a Board of Commissioners, impartial and independent, which shall be vested with full power to hear and determine and grant awards for all such as shall appear to be well founded. This mode has proved adequate, in similar cases, between the United States and other Powers. It is not doubted; but that it would prove equally so between the United States and Spain.

There is another question, which it is equally proper to adjust at this time. By the cession of Louisiana by His Majesty the Emperor of France to the United States, it becomes necessary to settle its boundary with the territories of His Catholic Majesty in that quarter. It is presumed that this subject is capable of such clear and satisfactory illustration, as to leave no cause for difference of opinion between the parties. By the treaty of April 30, 1803, between the United States and France, the latter ceded to the former the said province, in full sovereignty, in the same extent, and with all the rights which belonged to it, under the Treaty of 1800, by which she had ac-

quired it of Spain. That the nature and extent of the acquisition might be precisely known, the article of the Treaty of St. Ildefonso, making the cession, is inserted in that of Paris. To a fair and just construction, therefore, of that article, the United States are referred for the extent of their rights under the Treaty of 1803. There is nothing to oppugn its force or detract from the import of its very clear and explicit terms. We have the honor to present to your Excellency a paper on this subject, which, we presume, proves, in the most satisfactory manner, that the boundaries of that province, as established by the treaties referred to, are the river Perdido to the east, and the Rio Bravo to the west. The facts and principles which justify this conclusion are so satisfactory to our Government, as to convince it that the United States have not a better right to the island of New Orleans, under the cession referred to, than they have to the whole district of territory which is above described. Aware, however, that the question of boundary was one in which His Catholic Majesty was also interested, the President was not unmindful of what was due to that consideration. In pursuing and supporting the just rights of the United States, he is far from wishing to interfere with, or encroach on, those of Spain. As neighbors, he was also sensible of what was due to that interesting relation; and as a Power which claims respect in its intercourse with other nations, he was resolved to give a distinguished proof of that of the United States for His Catholic Majesty in the present case. Thus, no step has been taken since the territory was surrendered to those States by France, otherwise than a strong expression by the Congress of its sense of their rights; no portion of it has been garrisoned, or even possessed by their troops, which could involve any question of the kind adverted to, or manifested a disposition incompatible with these just and friendly sentiments. His definitive arrangements are yet to be taken. He seeks to adopt them in harmony with the sentiments and interests of His Catholic Majesty—a motive which induced the measure of an extraordinary mission, and inspires this communication.

So far, we have treated of the boundary which of right ought to be established between the two nations. It is proper, however, to examine and treat the subject in another view.

By the acquisition of Louisiana, the United States and Spain have assumed, in some respects, a new relation to each other. It is in its nature a very interesting one. It is practicable, at this time, to place it on such a footing, by suitable arrangements, as to preserve their friendship for ages. The importance of the subject merits their very dispassionate consideration, since a failure to adopt such may be productive of much harm. Happily, it is an unquestionable truth, that in consideration of the permanent and substantial interest of the two Powers, there does not exist at present a single point of collision, an opposing interest between them. There are only some topics of uneasiness and jealousy easy to be removed, but which, if suffered to remain, may engen-

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der animosities, embitter their intercourse, and finally prove the cause of much trouble, and even misfortune, to both nations. To remove them requires no sacrifice; on the contrary, much will be gained, since, by so doing, their harmony, and with it their permanent interests, will be secured.

What effect does the acquisition of Louisiana by the United States produce on the interest of the Powers in reference to each other? and what ought it to produce in their policy? These questions admit a ready answer. That province is bounded by Florida to the east, and Mexico to the west; hence, Florida is surrounded on every side, that of the ocean excepted, by the territory of the United States. It is, of course, an object with those States to possess it. And as Louisiana extends westward to Mexico, it is presumed to be an object with Spain to retard the progress of their settlements in that quarter. Here, then, is the obvious ground of an accord between the two nations, in an arrangement which seems to be well adapted to accomplish an object which each deems of importance. The object which we have the honor to present to your Excellency is intended to conciliate and provide for those interests. It is believed that its adoption will effectually do so. Your Excellency must be sensible, under existing circumstances, and especially since the acquisition of Louisiana, that that of Florida has become an object of much less importance to the United States. It is not from the want of territory, because it is known not to be fertile, and without it they have enough to satisfy their growing population for ages to come. It is, in truth, suggested more by a desire to remove all cause of a future variance between them and Spain, than of any immediate advantage to be derived from it in other respects. While that province remains to Spain, it must be, in some degree, a cause of jealousy to the United States. Situated in their interior, and detached from the other dominions of His Catholic Majesty, it is probable, to render it secure, that he would be compelled to put a strong force there. Hence, the United States would be compelled to do the same. Thus the attitude of hostilities would be taken, which a thousand causes would tend to promote. The jealousy of Governments so contiguously situated, the rivalry of Governors and Generals, and the conflict of commercial regulations, could not fail to produce that effect. In addition to which, it cannot be doubted that other Powers would take a pleasure in seeing a rupture between the United States and Spain. It is presumed that they are interested in it. Remove, however, this obstacle, and establish on just principles their western boundary, and all cause of inquietude and misunderstanding will be at an end. Their territories and police will be distinct, and their military stations at some distance from each other. Each Power will regulate its own concerns as it thinks best: neither will be interested in disturbing those of the other. Their Governments, on the contrary, will find themselves bound by their interests, their faith, and their character, to keep their citizens within their own limits, which it

will take ages to fill. Should Spain not place a strong force in Florida, it will not escape your Excellency's attention, that it will be much exposed to the danger of being taken possession of by some other Power who might wish to hold it, with very different views towards Spain than those which animate the Government of the United States. Without a strong force there, it might even become an asylum for adventurers and freebooters, to the great annoyance of both nations. In this light, however, we forbear to press it.

It is proposed, by the enclosed project, to establish a district of neutral territory between the two Powers, on which neither party shall encroach, and, with a view to accommodation, that it should be, for a given term, within the supposed limits of Louisiana. We are willing that the term should amount to twenty years, to give time for ulterior arrangements relative to that object, and the establishment of a permanent boundary between them in that quarter. If the boundaries of Louisiana are, as our Government believe them to be, and as, we presume, is sufficiently proved by the enclosed paper, this arrangement cannot be considered otherwise than in the light it is intended. This proposition, however, is not offered as an equivalent for the cession of Florida. It is proposed to make a pecuniary compensation for the cession to an amount which is deemed equal to its value. To fix that value, in case His Catholic Majesty is disposed to make the cession, cannot, it is presumed, be difficult, since, without regarding other considerations, the sum given for the whole province of Louisiana furnishes a just and suitable standard. By comparing the extent of the Territory of Louisiana with that of Florida, and taking into consideration the immense advantages derived to the United States from the entire command of the Mississippi and all the waters emptying into it, which followed the cession of Louisiana, we are promptly led to a fair result. On this point we wish to confer in person, when it may suit your Excellency's convenience. The sum which may thus be agreed on, it is wished to appropriate in the manner mentioned in the proposed convention.

In seeking to terminate amicably all subsisting differences between the two Powers, and to place their future relations on a basis of permanent friendship, it is thought that a formal stipulation in behalf of each, not only to observe the limits which may be agreed on, but to cause them to be observed by their respective citizens and subjects, may have a very salutary effect. If such a stipulation is regarded only as proof of the spirit in which the convention is formed, it will always have weight with both Governments to insure a compliance with it. But it merits to be received in a stronger light, since it makes it the duty of each Government to be attentive to, and to enjoin it on their citizens and subjects, respectively, strictly to observe the same. As the convention of the 11th of August, 1802, has not been carried into effect, it is thought best to suffer it to fall, and incorporate its contents into the present one;

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on that principle the project is formed. There seems to be a propriety in accommodating all subsisting differences, and providing for the respective interests of the two Powers, to comprise the stipulations which are necessary for the purpose, in the same instrument. To this mode, however, we have no preference, and only submit the idea to your Excellency's consideration.

To facilitate the communication, and promote despatch in an object of so much importance to our Government, we have the honor to annex a translation into French of this note, and the papers which accompany it, to your Excellency. They are as correct as they could be made by those attached to the legation, to whom alone we could confide their contents. We beg leave, however, to observe, that we consider ourselves responsible only for the originals, which are in English.

We beg your Excellency to accept the assurance of our distinguished consideration, &c.

CHARLES PINCKNEY.

JAMES MONROE.

Project of a Convention between the United States and Spain.

ARTICLE 1. Spain, acknowledging and confirming to the United States the cession of Louisiana, in an extent eastward to the river Perdido, cedes to them forever all the territory remaining to her between the Mississippi, the Atlantic, and the Gulf of Mexico, together with all the islands thereunto annexed, either while the Floridas belonged to Great Britain, or after they became provinces of Spain.

Possession of the said territory shall be delivered to a person authorized by the United States to receive the same, in — days, or less, if practicable, after the exchange of the ratifications of this convention. With the said territory shall be delivered all public property, except ships and military stores, as also all public archives belonging to the same.

Within — days after the delivery of possession, or sooner, if possible, the Spanish troops shall evacuate the territory hereby ceded; and if there should be any Spanish troops remaining within any part of the territory ceded by France to the United States, all such troops shall, without delay, be withdrawn.

Spanish subjects, within the ceded territory, who do not choose to become citizens of the United States, shall be allowed eighteen months to dispose of their real, and to dispose of or remove their other property.

The inhabitants of the ceded territory shall be entitled to the same incorporation into the United States, and to the same protection in their religion, their liberties, and their property, as were stipulated to the inhabitants of the territory ceded to the United States by the treaty of April 30, 1803, between those States and France.

ART. 2. It is agreed that, for the term of — years, no land shall be granted; nor persons who may have settled since the 1st of October,

1800, on lands not granted prior thereto, be permitted to continue within the space defined by the following limits, to wit: by a limit consisting of the river Colorado on the one side, from its mouth to its source; thence, a straight line to the most southwestwardly source of the Red river, with such deflections, however, as will head all the waters of that river; thence, along the ridge of high land which divides the waters belonging to the Mississippi and Missouri from those belonging to the Rio Bravo; and thence, a meridian to the northern boundary of Louisiana: and by a limit, on the other side of the Rio Bravo, from its mouth to its source: and thence, a meridian to the northern boundary of Louisiana.

Such of the settlements within the foregoing limits, not prohibited by the preceding clause, as were not under the authority of the government of Louisiana, shall continue under the authority of Spain. Such as were under that authority shall be under the authority of the United States. But the parties agree that they will, respectively, offer reasonable inducements, without being obliged to use force, to all such settlers to return from the space above limited, and establish themselves elsewhere.

The Indian tribes within the said limits shall not be considered as subject to, or exclusively connected with, either party. Citizens of the United States and Spanish subjects shall be equally free to trade with them, and to sojourn among them, as may be necessary for that purpose; and each of the parties agreeing to restrain, by all proper and requisite means, its respective citizens and subjects from exciting the Indians, whether within or without the said limits, from committing hostilities or aggressions on the subjects or citizens of the other party. The parties agree, moreover, each of them, in all public transactions and communications with the Indians, to promote in them a disposition to live in peace and friendship with the other party.

It shall be free for Indians now within the territory of either of the parties to remove to and settle the said limits, without restraint from the other party; and either party may promote such a change of settlement by Indians within its territory, taking due care not to make it occasion of war amongst the Indians, or of animosities in any of them against the other party.

The United States may establish garrisons sufficient, as security against the Indians, and all trading-houses, at any places within the said limits, where garrisons existed at any time under the Spanish government of Louisiana. And Spain may continue garrisons, for the like purpose, at any places where she now has them, and establish trading-houses thereat. Either party may also cause or permit any part of the country within the said limits to be explored and surveyed, with a view to commerce or science.

It shall be free for either party to march troops within the said limits against Indians at war with them, and for the purpose of driving or keeping out invaders or intruders.

ART. 3. It is agreed, that, within — years pre-

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vious to the expiration of the aforesaid term of — years, due provision shall be made for amicably adjusting and tracing the boundary between the territories of the United States westward of the Mississippi, and the territories of His Catholic Majesty; which boundary shall then be established according to the true and just extent of Louisiana as ceded by Spain to France, and by France to the United States, uninfluenced, in the smallest degree, or in any manner whatever, by the delay, or by any arrangement or circumstance contained in or resulting from this convention. It is also expressly stipulated by the parties, that they will cause the limits which are hereby defined, between them, to be faithfully observed, by restraining their respective citizens and subjects, by suitable arrangements, from violating them in any manner whatever.

ART. 4. His Majesty and the United States, wishing, in the same spirit of conciliation, amicably to adjust the claims which have arisen from the wrongs and excesses committed during the late war by individuals of either nation, or by others, within the territory or jurisdiction of either, contrary to the law of nations, the treaty existing between the two countries, or the principles of justice, have determined that the same shall be adjusted in the following manner: A Board of Commissioners shall be formed, consisting of five Commissioners, two of whom shall be appointed by His Catholic Majesty, two others by the President of the United States, with the advice and consent of the Senate, and the fifth by common consent of the four Commissioners; and, in case they should not be able to agree on a person for the fifth, the Commissioners of each Power shall name one, and leave the decision to lot; and hereafter, in the case of death, sickness, or necessary absence, of any of those already appointed, the remaining Commissioner or Commissioners of the Power whose Commissioner is dead or unable to attend, shall fill the vacancy. When thus appointed, each one of them shall take an oath to examine, discuss, and decide, impartially on the claims which they are to judge according to the law of nations, the existing treaty, and the principles of justice. The Commissioners shall meet and hold their session in Madrid, where, within the term of eighteen months, to be reckoned from the day on which they assemble, they shall receive all claims which, in consequence of this convention, may be made as well by the subjects of His Catholic Majesty, as by the citizens of the United States of America, who may have a right to demand compensation for the losses, damages, or injuries, sustained by them in consequence of the wrongs and excesses committed by Spanish subjects, American citizens, or others, within the territory or jurisdiction of either of the contracting parties. The Commissioners are to hear and examine, on oath, every question relative to the said demands, and receive as worthy of credit all testimony and evidence the authenticity of which cannot be doubted. The said Commissioners shall grant awards for the sums which may be due to the several claimants, with interest on the

same, at the rate of six per cent. per annum, to commence from such dates, respectively, as to them shall appear to be just. From the decision of the Commissioners there shall be no appeal; and the agreement of three of them shall give full force and effect to their decisions, as well with respect to the justice of the claims, as the indemnifications which may be adjudged to the claimants: the said contracting parties obliging themselves to satisfy the said awards in specie, in the manner stipulated by the sixth article of this convention.

ART. 5. The said Commissioners shall also take cognizance of and estimate all damages which were sustained by the citizens of the United States, by the suppression of the right of deposit at New Orleans by the Intendant of His Catholic Majesty, in the year 1802-3, contrary to the Treaty of 1795; for which the said Commissioners shall grant a certificate to the Government of the United States, the amount whereof shall be paid to it by the Government of Spain, in the same manner as it is stipulated in favor of other claims in the preceding article. The Government of the United States shall pay the sums thus received to the individuals who were injured by the suppression of the said deposit.

ART. 6. It is further agreed that the respective Governments will pay the sums awarded by the said Commissioners, under this convention, in the manner following:

The Government of the United States shall pay all such sums, not exceeding — dollars, which may be awarded as compensation to the citizens of the United States from his Catholic Majesty, in three equal annual instalments, at the city of Washington: the first instalments to be paid in eighteen months after the exchange of the ratifications hereof; or, in case they shall not be so paid, they shall bear an interest of six per cent. per annum, from the time they become due until they are actually discharged; and, in case the aggregate of the said sums should not amount to the said sum of — dollars, the United States will pay to His Catholic Majesty, within one year after the final liquidation of the claims cognizable by the said Board, at the city of Washington, so much as the said aggregate may fall short of the sum above-mentioned: but, on the other hand, if the whole amount of the sums awarded to citizens of the United States should exceed the sum of — dollars, His Catholic Majesty shall pay the surplus, without deduction, to such claimants, within one year after their claims shall be respectively liquidated. The said claims shall, nevertheless, bear an interest of six per cent. from the time of their liquidation until they are discharged.

The Government of the United States shall also pay, without deduction, at the city of Washington, all such sums as may be awarded against them by the said commissioners, for compensation due to Spanish subjects, within one year after their claims shall be liquidated; and, from the time of their liquidation, the said claims shall bear an interest of six per cent. per annum, until they are discharged.

ART. 7. This convention shall be ratified within

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— after the signing thereof, or sooner, if possible, and the ratifications shall be exchanged within — days after the ratification by the United States, at the city of Washington.

His Excellency Don Pedro Cevallos to Messrs. Monroe and Pinckney.

ARANJUEZ, *January 31, 1805.*

GENTLEMEN: The King, my master, having, on all occasions, given such repeated proofs of his friendship towards the United States, and of his desire to live with them in peace and harmony, could not but hear with pleasure what you have been pleased to manifest in your esteemed note of the 28th instant, relative to the sincere desire of the President of the United States to see the friendly relations of the two countries in a manner the most solid and permanent, and that, for this purpose, the American Government had named an extraordinary mission to this Court, to commence such negotiations as might be best adapted to complete an object of so much importance, and founding them on just and impartial principles. His Catholic Majesty, on his part, desires nothing more ardently than that those just and equal principles, so conformable to the rectitude of his Royal mind, may direct the discussions and negotiations depending between the two Governments. For this end nothing appears better adapted than the mode proposed by your Excellencies in the first part of your note:

“It is proper to examine impartially the several points which are depending between our Governments. To make their friendship perpetual, every cause of complaint and inquietude should be brought into view, and amicably settled. For this purpose it is necessary to ascertain their respective rights, in each case; since, thereby, an unerring rule will be established, by which this adjustment may be made, and their future harmony secured. No just Government will ever demand anything which will not bear the test of that rule: no just Government will ever refuse to discharge an obligation which it imposes.”

According to this principle proposed by your Excellencies, and which certainly is well worthy the good faith of both Governments, it appears the more proper that, before we proceed to examine projects of a convention, which ought to result from discussion of all the different points in dispute, we should first examine each point separately, and in this form determine the respective rights of each country; and then proceed to such negotiations as the interest of each country may require. Under this idea, and following the tenor of your note, it appears that the points depending may be reduced to the following:

First. The damages occasioned during the last war, by the excesses committed by individuals of both countries, contrary to the law of nations and the existing treaty. This point is nearly decided by the convention of 1802, which has been ratified by the American Government; and His Majesty, on his part, is disposed to ratify the same, after the obstacles which occasioned its postponement,

shall be removed. Thus there is but little to regulate on this point, considering how far it is already advanced, and that the sincere desire of both Governments is to proceed with candor and good faith.

The second point mentioned in your Excellencies' note, relative to the indemnification of injuries supposed to have been received by American citizens, in consequence of the suppression of the deposit at New Orleans by order of the Intendant at that city, is a point of discussion which has not as yet been commenced, and it is one on which the Spanish Government is convinced that the United States have neither any motive nor right to found a reclamation.

Third. This point, which is relative to the demarcation of the limits of Louisiana, retroceded by Spain to France, and by her transferred to the United States, by its nature, subdivides itself into two parts, to wit: the demarcation of the limits of Louisiana on the east, or side of the Floridas, and that on the side of the interior provinces of New Spain. As a testimony of the desire with which His Majesty is actuated, that these demarcations may be executed with the skill and and justice requisite, and at the same time with all possible despatch, I have to inform you, what is already known to your Government, that, at the commencement of the last year, the King named for his Commissioner for these demarcations and limits, Brigadier Marquis of Casa Calvo, who is now at New Orleans with the engineer Don Joseph Martinez. Not having yet agreed upon others of the said points mentioned in your Excellencies' note, and they being in their nature unconnected, it appears that it would only be confounding them and multiplying their confusion to treat upon the whole at once; and proceed immediately to form for either party projects of a convention from the mass. Analyze these incorporated points of discussion, and a discussion will become much more plain and simple, and, with this new light, it will afterwards be easy to embrace the whole at one view.

This method is clear and simple, and, according to my idea, is what you indicate in the first part of your note. This being the case, it appears to me that we may occupy ourselves, in the first place, in determining the point relative to reclamation; for which purpose, we may take up the convention of August, 1802, by reason of its almost finished state; fix the rights of each country upon each point, and the means will be plain and easy to negotiate them, with that equal utility which both countries may find convenient. I have no doubt but you will find this method of proceeding conformable to reason, and, waiting your reply, I am, &c.

PEDRO CEVALLOS.

Messrs. Pinckney and Monroe to Mr. Cevallos.

ARANJUEZ, *February 5, 1805.*

SIR: We have received your Excellency's letter of the 31st ultimo, in answer to that which we had the honor to write to you on the 28th, and

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beg you to be persuaded that we are highly gratified with the assurance it contains, that His Catholic Majesty is disposed to meet the President of the United States in such arrangements, on just and equal principles, as may be necessary to accommodate subsisting differences, and place the relations of the two countries on a basis of permanent friendship. Since our Governments are animated with such honorable views, it cannot be doubted that their object will be accomplished.

Your Excellency observes that it will be proper to examine previously, and separately, each point depending between our Governments, to establish their respective rights in each, and then proceed to the adoption of such a project of a convention as may provide for the whole. In this idea we perfectly agree. It was on that principle, as you justly observe, that our note of the 28th was conceived; by it every topic of complaint, every question of interest is presented to your Excellency's view. It remains only to decide these several points, and, with them, the fortune of the present negotiation.

The case of claims for injuries done to the citizens and subjects of either party, within the limits and jurisdiction of the other, being first in order of time, ought to be first determined. As we presumed that this subject had been already sufficiently discussed, we thought it sufficient in our former note to submit such arrangement respecting it as we were authorized to propose. Since, however, it seems to be your Excellency's desire, we shall not hesitate to communicate more fully the views and sentiments of our Government on this point, and the principles on which they are founded. It is the more necessary so to do, to free it from the complexity in which it may be otherwise involved.

It is known to your Excellency, that, by the convention of August 11, 1802, an immediate provision was not made for satisfying the claims of their respective citizens and subjects for all the injuries which they had received in the course of the last war, within the jurisdiction of each Power, and for which they were responsible; that it was not then possible for the Plenipotentiaries charged with that subject to agree on a mode of arbitrating the claims originating from the excesses of foreign cruisers, agents, consuls or tribunals, in their respective territories, which might be imputable to their two Governments; and that, in consequence thereof, it was agreed between them to provide then for the adjustment and satisfaction of such as were committed by their respective citizens and subjects only, reserving to each Government, its citizens, and subjects, their respective rights, with liberty to bring forward their claims at such times as might be convenient to them. Had that convention been carried into effect at any time before the present, we should have now to provide for the claims which were then postponed, whose just title to reparation seems to be sufficiently sanctioned by that instrument. But as that convention has not been carried into effect; and, of course, no satisfaction made

for that portion of the injuries complained of, it is proper that the whole subject should now be taken into view and definitively settled. It would badly comport with the spirit of the present negotiation, whose object is to adjust every difference, and remove every cause of inquietude, to leave anything unfinished. Our Government considers its citizens entitled to compensation for every injury which they did receive within the jurisdiction of His Catholic Majesty, contrary to the treaty between the United States and Spain, the law of nations, and the principles of justice sanctioned by them, whether they were committed by His Majesty's subjects and tribunals, or those of any other nation. For all such acts, the Government within whose limits they are committed is alone responsible; for over them has it the exclusive jurisdiction. A contrary opinion cannot be advanced without derogating from the established doctrine of the law of nations, or rights of sovereignty incident to each. It is a well established doctrine, that no two nations can, by their accord, or any arrangement between them, change a law adopted by the whole. Such a change, if agreed on by any two nations, can only operate as a special compact between them, which finds an equivalent by the reciprocity of the stipulation, or some other article of the treaty, but can never change the relation of either with other Powers, or the rights and claims of such other Powers on each of those nations. It is equally well established, that protection is due by every Government to foreigners within its limits, in return for which they are entitled to their allegiance while they remain with them, as it is that such protection cannot be withdrawn, or the jurisdiction of a foreign Power be permitted within its limits, to the injury of a third Power. A contrary doctrine supposes separate and independent jurisdictions and Governments within the same limits, and altogether confounds the nature of sovereignty, which is complete, absolute, and exclusive, wherever it exists. It is proper to add that this doctrine of the law of nations, so clear and explicit, is still further enforced by the stipulation of the sixth article of the treaty of 1795 between the United States and Spain.

In the project which we had the honor to present to your Excellency, you will find it is intended to provide for the whole of these claims, whether the convention of August 11th, 1802, is carried into effect or suffered to expire. In the former case, we should expect that an article be inserted in the proposed one, to provide for those cases which were unprovided for in that. We consider it our duty to inform your Excellency that we cannot consent to any arrangement which does not provide for the whole subject, having received orders to that effect by a courier who has just arrived with despatches as late as the 3d December last. We owe it to the spirit of candor which is to prevail in this negotiation, to state to your Excellency this fact; and we ask of you to inform us, in the same spirit, whether we are to expect the accord of your Government to such an arrangement as will be effectual to this object.

That our Government is entitled to expect an

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adequate compensation for the injuries which our citizens received by the suppression of the right of deposit at New Orleans, is a point on which we did presume there could be no doubt. The right to such a deposit is stipulated forever to the United States, by the twenty-second article of their Treaty with Spain, either at New Orleans, or on some other part of the banks of the Mississippi equally convenient to the parties. It is the obvious import of that article, that there never should be a moment's interruption in the enjoyment of that right; a right which was so necessary to the interest of those dependent on it, and, of course, to the peace and friendship of the two countries. In exercising the right reserved to His Catholic Majesty to change the place of deposit, and assign some other equivalent establishment, it is equally the import of that article, that the whole arrangement should be made at the same time; that the same act which suppressed the existing deposit should open another; and that the Government of the United States should be apprized of that intention in due time to prevent their citizens being injured by the measure, and also to be consulted on the place which it was proposed to substitute to the existing one. In the proceeding which took place at New Orleans, none of those rules were observed; all respect for our Government and the rights of our citizens was lost sight of. In short, had that act been imputable to His Majesty's Government, the President could have seen in it nothing short of a commencement of hostilities, as much so as if his troops had invaded their territory, or his fleets entered in hostile array any of their ports. But the President never considered that act as imputable to His Majesty's Government; he entertained too high a respect for the good faith of the Catholic King to believe that it proceeded from him; he always considered it as the act of the Intendant, and was happy in the result to find that such was the case. Nevertheless, being the act of His Majesty's officer, his Government is responsible for the injuries resulting from it. Your Excellency will find that, as early as March 25, 1803, the Minister of the United States accredited with His Majesty, claimed, by order of the President, an indemnity for these injuries, which was repeated in subsequent notes of the 12th and 23d of April of the same year. It has not since been pressed, because by like order, the subject was reserved with others for final arrangement at this present occasion.

On the subject of limits, we have little to add to what we have already stated in our former note. By it a full view is given of what our Government conceives to be its rights in that respect. The Commissioners appointed by His Majesty for the demarcation thereof can do nothing till some agreement takes place between the two Governments to fix the principle which is to guide them. They must remain inactive until it be known by what course, latitude, meridian, or natural boundary, the demarcation is to be made. It is an important object of the present negotiation to fix that principle. We take the liberty also to refer your Excellency to our former note, and the pieces

which accompanied it, for the views of our Government on the other topics of a territorial nature. It is not in our power to add anything on those points to what we have therein stated.

The President, being very desirous, with a view to the permanent harmony and welfare of the two nations, to adjust and arrange every question and interest depending between them, and having given us full power for the like purpose, waits with anxiety the result. Having had the honor to submit to your Excellency, as was agreed in our first interview, our propositions, for the attainment of that desirable end, by which the subject is presented equally in detail as in a general view, and, having now given the further explanations, which were desired by your esteemed note of the 31st ultimo, we have only to request that you will give us your answer to the same. As every point has been long under the consideration of His Majesty's Government, we do not doubt that its mind is made up as to the course the business is to take. It is in His Majesty's power, by the answer which you give, to fix at once the relations which are to subsist in future between the two nations. The United States have done everything in their power, which a regard to justice and the rights of their citizens will permit, to place and preserve them on a most friendly footing; and we flatter ourselves that His Catholic Majesty, who is distinguished, among Sovereigns, by his regard for justice and good faith, will meet them in such arrangements as may be effectual to the object.

We beg your Excellency to accept the assurance of our distinguished consideration and esteem.

CHARLES PINCKNEY.
JAMES MONROE.

Mr. Cevallos to Messrs. Pinckney and Monroe.

ARANJUEZ, Feb. 10, 1805.

SIRS: I see by the tenor of your esteemed favor of the 5th instant, in reply to my note of the 31st ultimo, that we are of the same opinion, as it relates to the principle established, that, to regulate amicably all the points depending between the two Governments, it is necessary, first, to establish the rights of each nation upon each one of the points in dispute, and then to bring forward such negotiations as the reciprocal interests of each country may require; and, in consequence of the point relative to indemnification for damages, occasioned during the last war, by individuals of each nation, being already so far advanced, that ought undoubtedly first to occupy our attention: we will, therefore, in this letter, discuss the points relative to indemnification, leaving for another opportunity the discussion on the limits, which is so different in its nature.

It is just that the losses sustained by the citizens or subjects of either nation, during the last war, contrary to the law of nations, or the existing treaty, should be satisfied; and to this effect the convention of the 11th of August, 1802, between the Plenipotentiaries of the two Governments, was concluded, that the individual sufferers might find a quiet and convenient redress.

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The intention of the King, my master, always unchangeable, and always conformable to the accredited honor and justice which characterize him, is now the same that it was at the time that the convention was concluded.

However, some circumstances have taken place between the time it was concluded and its ratification, which will make several explanations necessary. In the first place, it appears that various subjects of Spain, who had reclamations to make, having been injured by citizens of the United States, in consequence of this convention, came to Madrid from South America, hearing that it was adjusted, but were obliged to return home upon the report that the Senate of the United States had refused to ratify it during the session of 1803. It was but reasonable, then, that these vassals of His Majesty should be informed that the convention was ratified, that they might come forward to establish their claims; and for this, it was necessary to give them a certain space of time. His Majesty proposed that this space of time should be agreed on between the two Governments, that the ratification might be known to all those interested.

It having come to the knowledge of His Majesty that Congress had, on the 27th of February, approved an act, by which it appears that the President was authorized to establish custom-houses in the Territory of West Florida, and as this province belongs to His Majesty, he having conquered it by the valor of his arms, not having received it from France, of course could not *retrocede* it to her; and as he was in quiet possession of the same, and still remaining possessed, His Majesty could not but be offended at this account. Even should it be supposed that the United States have pretensions to this territory, it certainly was not the way to bring them forward to proceed to acts of possession, and disturb a friendly nation in her rights, by a solemn legislative act; such conduct must, consequently, appear to His Majesty very little conformable to the friendly relations of the two countries; and, under such circumstances, it did not correspond with the respect due to his royal person, or to the nation which he governs, to ratify conventions, which are acts of political friendship, with those who had violated, in a solemn manner, the rights of his sovereignty, until they should give satisfaction, or corresponding explanation. Thus it was just that he should ask this satisfaction, which was done accordingly.

It having also reached the King's notice that the French Government had satisfied the United States for the damages sustained during the last war by her privateers, it appeared not only unnecessary, but capable of producing confusion, to let the sixth article of the Convention of August, 1802, exist; by which, as His Majesty did not confess himself responsible for the damages occasioned by French privateers, on the coast and in the ports of Spain, the United States did not strengthen their right which they thought they possessed; and to let it exist would but expose the business to confusion. A desire, therefore, was manifested,

that the sixth article should be suppressed. For the purpose of making these circumstances known to the American Government, His Majesty thought proper to suspend the ratification of the Treaty, and to send off a courier to the United States, with letters to this effect, to his Minister resident there.

Your Excellencies are acquainted that your Government, being instructed relative to the observations which were made to them by His Majesty's Minister upon the subject, agreed to fix a term, in which His Majesty's subjects interested in the convention might have notice of its ratification, and come forward with their claims before the Commissioners; and that each Government should give orders to their respective citizens and subjects, not to commence their operations until a convenient term should expire. Thus, upon this article, there remains nothing to do but to fix this term, in order that the ratification of the convention may take place.

In respect to the second particular, the reply of the American Government was not so decisive and clear, as His Majesty had a right to expect from a Government so friendly. The act of Congress of the 24th of February, 1804, in its obvious and literal sense, disturbed the peaceable possession which his Majesty had, and still has, of West Florida; and the explanations of the President of the United States, contained in his proclamation of the 3d of May, saying that it was to be carried into effect within the United States, could not be considered but as equivocal and susceptible of a double meaning, although the explanation of the Secretary of State of the United States is somewhat more explicit, promising to leave everything *in statu quo*, until an amicable arrangement should take place with Spain; and that the port of entry mentioned in the act should be established at Fort Stoddert, within the present territory of the United States. As His Majesty desires to live in harmony with the United States, he wishes to persuade himself that this explanation, although it does not give that satisfaction which he had so just a right to expect, is in some measure satisfactory, so far as it respects his quiet possession of West Florida. But could not His Majesty complain that satisfaction has not been given in explicit and solemn terms, for the publicity of a solemn act, whose obvious and literal sense went to disturb his quiet possession? On the other hand, it is said, in a plausible manner, that the port of entry shall be at Fort Stoddert: but how is it possible to arrive at Fort Stoddert, or go from thence to the sea, without navigating the rivers of West Florida, traversing its territory, and disturbing the peaceable possession of His Majesty? Thus, his well founded motives of complaint, in respect to that act, still exist; and His Majesty intends to keep them in mind, that satisfaction may be given by the United States; but, as it relates to ratifying the Convention of August, 1802, His Majesty agrees, from this time, to be satisfied in this respect; and thinks, in so doing, that he gives an unequivocal testimony of his friendship towards the United States.

Two obstacles to the ratification of the conven-

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tion being removed, we should only now treat of what relates to the sixth article of said convention. His Majesty expressed a desire that this article should be suppressed, under the idea that its insertion would neither add to nor diminish the rights of the United States or of His Majesty; the clear and obvious sense of that article is, that the two contracting parties, not having been able to agree relative to the indemnities reclaimed by the United States for damages occasioned by French privateers and tribunals, on the coast and in the ports of Spain, reserved to themselves, for a future day, the rights they might have; the United States to reclaim, and His Majesty to show that he was not in any manner bound to satisfy them. In this particular, therefore, no right is given to the citizens of the United States; or taken away from them, by this article; and during the long space of time that has passed between the adjusting the convention and its ratification, His Majesty thinks he has demonstrated, in a most evident and decisive manner, that he is not responsible for the said indemnification. It appears superfluous to permit the existence of an article that can neither give nor take away any right, and which can only serve to produce confusion.

It never was the intention of His Majesty, nor is it now, that the suppression of the said article should imply a renunciation, by the United States, of the right they think they have to reclaim the said indemnification, but, on the contrary, only that they should not believe that His Majesty renounces, on his part, the right he thinks he has to resist the payment of it.

But should the American Government have any objection to the suppression of the said article, His Majesty will not oppose its continuance, provided it be understood in the ratification that, by the insertion of the sixth article, it is not in anywise to be inferred that His Majesty renounces the exceptions which are occasioned by the convention concluded between the United States and France, the 8th Vendemiaire, year 9; the context of the treaty of the sale of Louisiana concluded between the same Powers; the affirmation of the French Government, through the medium of Lucien Bonaparte, its Ambassador, that the damages sustained by the United States during the last war were satisfied by France; and other strong reasons by which this pretension is opposed.

The American Government cannot be surprised that His Majesty wishes to make this explanation in his ratification, if it is recollected that such an explanation is undoubtedly contained in the sixth article. It mentions that His Majesty reserves to himself the rights which His Majesty believes to belong to him; and, at present, to avoid ambiguity, he thinks it necessary to explain in the ratification what these rights are, which are reserved by the sixth article, and to make mention of them.

If the United States, on their part, wish to validate the rights which they think they have to exact indemnifications, and also to reserve them in the same article, it will then be beginning a separate pretension, which, in no wise ought to

embarrass the regular course of the convention of 1802. It should be reduced to this question: whether Spain is responsible or not for the damages and losses occasioned by French privateers and tribunals within her jurisdiction, during the last war? Spain believes that she is not responsible, and thinks that she can demonstrate it to a certainty.

But as this is the second point in order relative to the pretensions which your Excellencies have manifested, it appears to me convenient to treat it separately, also, after the plan proposed in my note of the 31st ultimo. In the mean time, referring you to what I have already written on this point, relative to indemnification for losses sustained by French privateers, &c., &c., to Mr. Pinckney, under date of 23d of August, and 5th of October, 1803, and to save your Excellencies the trouble of referring to the correspondence of that year, I take the liberty to enclose copies of them, and also of opinions of lawyers the most celebrated in the United States, who have been consulted upon this subject, and who unanimously declared that Spain was not responsible to satisfy said indemnities; and in which declaration these lawyers gave a proof of their rectitude, by their sincere confession of the slender foundation on which these reclamations of their country rested.

I conclude this letter by assuring your Excellencies that His Majesty is disposed to ratify the convention of the 11th of August, 1802, in the form which has been mentioned; and that, should your Excellency find no difficulty in so doing, as I hope will be the case, immediately after the ratification of the convention, we will proceed to the depending points, and finally to those negotiations which the reciprocal interests of both countries may require.

I renew to your Excellencies the sincere demonstrations of my distinguished considerations, &c.
PEDRO CEVALLOS.

Messrs. Pinckney and Monroe to Mr. Cevallos.

ARANJUEZ, Feb. 12, 1805.

SIR: We have received your Excellency's letter of the 10th instant, and have considered it with the attention which was due to an interesting communication on a subject of great importance to the United States. By it we perceive, with regret, that an accord is not likely to take place between us on the point to which it refers, since it appears that His Catholic Majesty is not disposed to make any reparation to the Government of the United States for all the injuries which their citizens received under her jurisdiction, of the character described in our former notes, whether the same were committed by his subjects or those of any other Power. Having had the honor to inform your Excellency that we could accede to no arrangement which did not provide for every injury, it seems useless to prolong the discussion on that point. We submit it to your Excellency's consideration on what we have already said.

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Your Excellency having expressed a desire to leave the other points to be discussed afterwards, it is proper now to proceed to them; and as we have already submitted the claims of the United States for injuries arising from the suppression of the right of deposit at New Orleans, and as to boundaries, with our opinions thereon, and the wish of our Government that the same should be amicably adjusted, we take the liberty to request that your Excellency will have the goodness to state to us what are the views of His Majesty's Government on these points, particularly as to the eastern and western boundary of Louisiana; and how far His Majesty is content to cede all his claims to the territory lying eastward of the Mississippi; whether he is willing to adopt the plan of a neutral territory, and in what extent. By being possessed of His Majesty's sentiments and propositions on these points we may be enabled to take a view of the whole subject, and see whether it is yet possible to come to some accord by a general arrangement, which, while it keeps out of sight questions, on which, unfortunately, there has been so much difficulty and disagreement, may, in the end, do substantial justice to all parties. Believing this to be the most effectual and speedy mode of concluding the business, we shall wait with anxiety and impatience your Excellency's answer to this communication. We beg to repeat that we shall receive with consideration, and weigh with attention, whatever propositions by His Majesty's order, your Excellency will do us the honor to communicate, having in view the amicable adjustment of the whole business.

We have the honor to request that your Excellency will accept the assurance of our high consideration.

CHARLES PINCKNEY.
JAMES MONROE.

Don PEDRO CEVALLOS,
First Secretary of State, &c.

Mr. Cevallos to Messrs. Monroe and Pinckney,
ARANJUEZ, Feb. 16, 1805.

GENTLEMEN: The contents of your esteemed note of the 12th instant, in answer to mine of the 10th, have caused me some surprise, as well on account of not having found in it, as I promised myself, that your opinions are for continuing the discussion relative to the reclamations of individuals of both nations, as of your determination to suspend the discussion upon the matter of this subject, unless the Spanish Government will make itself responsible for the losses occasioned by French privateers. It is my opinion that, as there are two species of reclamation, so different in their nature, they can easily be divided into two; and that, after the convention upon the first point is ratified, the discussion upon the second can take place without inconvenience; and I am persuaded, that, in justice to the individuals of both nations, who have received reciprocal injuries during the last war, we ought to terminate and satisfy, as soon as possible, those reclamations, on which

both Governments are agreed, without prejudice to, or discontinuing the examination of the other points.

It appears, however, that your Excellencies wish to leave this point unsettled, and, moreover, refuse to enter into ulterior discussions on the point of indemnifications for losses occasioned by French privateers. In this state of the affair, and notwithstanding the manner in which your Excellencies have chosen to proceed, I cannot but repeat to you, what the accredited honor of my Government requires, to wit: that His Majesty is now, and ever will be, disposed to do justice to the citizens of the United States injured by Spanish subjects during the last war, and to conclude and ratify any convention relative thereto. But as it relates to injuries occasioned by French privateers on the coast and in the ports of Spain, His Majesty thinks he cannot accede in this point to the pretensions of the United States, because he believes that he has demonstrated, in the most convincing and evident manner, that Spain is not responsible for such indemnifications.

Although in my letters to Mr. Pinckney of the 23d August and 5th October, 1803, and in reply of the lawyers of Philadelphia and New York upon this point, of which I enclosed you copies in my note of the 10th instant, it is clearly demonstrated that the Spanish Government is not responsible for such indemnifications, I had nevertheless determined that, when (in the order proposed) we should have arrived at this second point of the pretensions of your Government, to have extended my observations thereon, so as to demonstrate the solid reasons by which the Spanish Government could refute such pretensions. But as your Excellencies believe that it is not necessary, or that it is incompatible with your instructions to lose time in such discussions, I do not wish to molest your attention, and only again refer you to the letters before-mentioned, and also to the reply of the American lawyers. But your Excellencies will permit me to make known to you how far the French Government is persuaded of the unfounded right which the American Government has to reclaim anything from Spain, for damages occasioned by French privateers within the jurisdiction of Spain, and of the surprise which the notice of such a demand from the United States has occasioned to France. For this purpose, I shall copy, for the information of your Excellencies, the expressions made use of in the latter part of a note under date of the 27th of July, 1804, written by the French Minister of Foreign Affairs to the Ambassador of His Catholic Majesty at that Court.

The French Government erroneously believed that Spain had gone so far in her condescensions to the United States, as to make herself responsible for the said indemnifications, and, in consequence, the French Minister of Foreign Affairs explained himself in the following manner:

"And, certainly, if I had been informed that the Ministers of His Catholic Majesty had carried their condescensions towards the United States so far as to engage Spain to be responsible to it

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for the indemnities for pretended violations made by France, I should most assuredly have received from my Government an order to manifest the discontent which France would have experienced by a condescension so improper; a discontent that would have been more strongly expressed towards the Government of the United States, than towards Spain. Besides the explanations which have already been given to your Court on this subject, (alluding to the communication of the Ambassador, Bonaparte,) and those which I have authorized to be again made to the Government of the United States, by the *Chargé d'Affaires* of His Imperial Majesty, ought to leave the presumption that, from the opinion which His Majesty has adopted on this question, that as it has already been the subject of a long negotiation, and of a formal convention between France and the United States, it cannot again become the subject of a new discussion."

The expressions of the French Minister are clear and pointed, and portray, in a convincing manner, not only that France has satisfied the United States for the damages which they pretend to claim from Spain, but also the just surprise which has been caused to his Government by the notice of such pretensions on the part of the United States, pretensions which are directed to obtain a double indemnity for one and the same debt.

Under this supposition, and continuing the order we proposed, to fix, in the first place, the rights of each nation upon each one of the points in controversy, I will proceed to that of indemnifications, which your Excellencies reclaim for the suspension of the right of deposit at New Orleans. To determine whether Spain is or is not responsible for the damages which your Excellencies suppose to have been sustained by the citizens of the United States, by the suppression of the deposit at New Orleans, in consequence of the edict of the Intendant of that city, it is necessary to examine what are those damages, and from whence they have arisen. The edict of the Intendant of New Orleans, suspending the deposit of American produce in that city, did not interrupt, nor was it the intention to interrupt, the free navigation of the Mississippi; consequently, these pretended injuries are reduced to this small point, that, for a short time, the vessels loaded in the stream, instead of taking in their cargoes at the wharves. This obstruction will appear still less, when we consider that, during a great part of the time that the deposit was suspended, it was in the middle of Winter, when the exportation of produce from the western parts of the United States by the Mississippi is very inconsiderable. If the erroneous opinions which were formed in the United States upon the occurrences at New Orleans; if the complaints published in the papers of your country, as false as they were repeated, that the navigation of the Mississippi was interrupted; if the virulent writings by which the public mind was heated, and which led to compromise the American Government, and tarnish the good name of that of Spain, were causes that the inhabitants of the Western Territory of the

United States could not form a correct idea of what passed at New Orleans; and if, in this uncertainty, they were disappointed in the extraction of their produce, or suffered other inconveniences, they ought to attribute the same to internal causes, which originated in their own country, such as the writings before-mentioned, filled with inflammatory falsehoods, the violence of enthusiastic partisans, and other occurrences, which, on those occasions, served to conceal the truth. The Government of Spain, so far from being responsible for the prejudices occasioned by these errors and erroneous ideas, ought, in justice, to complain of the irregular conduct pursued by various writers and other individuals of the United States, which was adapted to exasperate and mislead the public opinion, and went to divulge sentiments the most ignominious, and absurdities the most false, against the Government of His Majesty, and his accredited good faith.

Estimate the damages which may have arisen to the citizens of the United States by their erroneous conception of what took place at New Orleans, and they will be found to be no other than the trifling inconvenience before-mentioned, of their ships loading in a situation not so commodious—an inconvenience for which the Government of Spain is not responsible, (neither ought it to be,) and which does not, in any manner, merit to be mentioned, more especially when it is considered that those who experience it, had been enjoying the rights of deposit for four years more than was stipulated in the treaty, and this, notwithstanding the great prejudice it occasioned to His Majesty's revenue, by making New Orleans the centre of a most scandalous contraband trade, the profits of which it is not improbable but that some of those individuals have, in part, received, who now suppose themselves injured by said trifling inconvenience.

After four years more than the treaty expressed, to wit: three years, making in all seven years, the Intendant thought that it was his duty no longer to permit a deposit, which gave an opportunity for carrying on a fraudulent commerce, prejudicial to the interests of His Majesty, for which he was accountable; he thought it was necessary that New Orleans should no longer be the place of deposit, on account of those inconveniences, and, in consequence, prohibited the same.

Before proceeding to such a determination, the Intendant ought to have asked instructions from his Government; but, perhaps, he thought he might compromise, by delaying this measure. His Majesty, as soon as he was informed of the edict prohibiting the deposit, was pleased to revoke it, wishing thereby to give another testimony of his friendship for the United States. What, in strict justice, was the deposit at New Orleans? A generous and gratuitous concession of the King my master for three years. It is true that His Majesty agreed, in the twenty-second article of the treaty, to continue the favor of the deposit, if it should be found that no inconvenience resulted from it, and of this no person was a better judge than His Majesty, and his agent in that colony.

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If the United States desired, after the expiration of three years, to continue the deposit at New Orleans, in a less precarious manner, or to have obtained another place for the deposit, they ought to have solicited the same; for it is more natural that those who aspire to a favor should solicit it, than that those who have the possession of the same should propose the cession or continuance of it.

By this it is not intended to support the edict of the Intendant; His Majesty has disapproved the act; giving, therefore, a proof of his friendship for the United States. However, this subject ought not to be treated on in the light of exacting indemnifications resulting from it, but should be examined to see if, in strict justice, the Intendant, or the Spanish Government, could or could not prohibit the deposit at New Orleans; four years more than the three stipulated in the treaty having expired, and during which time the Royal Treasury experienced the most serious prejudice. Most certainly the Intendant had a right to prohibit the deposit, and, consequently, the Government of Spain cannot be responsible on this point; and this reflection acquires a double weight, if we consider the trifling inconvenience occasioned by the true effect of the said edict, of its short duration, and, on the other hand, the serious damages which the King's revenue has experienced by the continuance of the deposit for four years over and above the term stipulated in the treaty. I think your Excellencies will be convinced of the force of these arguments; and it is to be desired that, in consequence of what I have represented to your Excellences, and to Mr. Pinckney in particular, upon the various points of indemnifications reclaimed by your Government, we may now be of the same opinion, and proceed to fix the rights of each nation, on the other question, relative to the limits of Louisiana, which is in its nature different; because, to have the first points in dispute undecided on, and even without discussing their merits, cannot but augment the confusion of the business; for it is very difficult to settle, in an amicable manner, the whole of the points in dispute, there being an essential difference of opinion on some parts of them.

I am also disposed to enter into a discussion upon the limits of Louisiana, but in the manner proposed by your Excellencies, and adopted by me in my note of the 31st ultimo, to wit: to fix, in the first place, the rights of each country, and then proceed to such negotiations as may be convenient to both nations.

With demonstrations of my most distinguished consideration and respect, I remain, &c.,

PEDRO CEVALLOS.

Messrs. Monroe and Pinckney to His Excellency Don Pedro Cevallos.

ARANJUEZ, Feb. 18, 1805.

Mr. Pinckney and Mr. Monroe have the honor to present their compliments to His Excellency Don Pedro Cevallos, and request that he will be so good as to honor them to-morrow with a con-

ference, or at such other time as may be more agreeable to him. They think proper to ask this conference, in consequence of the note of his Excellency of the 16th instant, received this morning, which appearing calculated to put a prompt end to the negotiation, and that not in an amicable manner, they are desirous of obtaining it, before they give an answer to that note in the manner which their recent instructions make necessary, to see if it is yet possible to arrange amicably the differences which subsist between the two countries.

His Excellency Don Pedro Cevallos to Messrs. Monroe and Pinckney.

ARANJUEZ, Feb. 24, 1805.

GENTLEMEN: In my note of the 16th instant, I informed your Excellencies that, after having examined the point relative to the indemnifications claimed by the United States, I should be equally disposed to enter into discussions upon the limits of Louisiana. In this mode of proceeding, I follow the plan laid down in your Excellency's first note, to wit: first, to fix the rights of each nation, and then proceed to such negotiations as may be proper for both.

On my part, I continue to follow this plan—a plan which is so conformable to the wishes of both Governments, and so well adapted to the purpose of terminating amicably their differences. We will now begin the examination of the limits of Louisiana, whose boundaries, by their nature, are divided into parts essentially distinct; and, for this reason, we will examine them separately. They are the limits of Louisiana on the east, or side of the Floridas, and its boundary on the side of the interior provinces of New Mexico. The first shall be the object of this letter.

If the declaration of the act of Congress of the 24th February of the last year had not anticipated the declaration of the pretensions of the United States, to extend the limits of Louisiana on the east as far as the river Perdido, including within them the greater part of West Florida, I should have been surprised to have seen this pretension manifested in the first note of your Excellencies. It appears as if the title alone of the treaty, by which His Majesty retroceded Louisiana to France, and to whose title the United States have succeeded, was sufficient to banish even the most distant idea that His Majesty had by it ceased to be the proprietor of West Florida, a province which Spain never received from France; for the possession of which she was only indebted to the valor of her arms many years before the acquisition of Louisiana; and, never having received it from France, it could not be included in a treaty founded entirely on the principle of retrocession. But as, notwithstanding this reflection, so obvious and clear, the United States pretend to stretch the limits of Louisiana to the river Perdido, I find myself under the necessity to manifest more fully the unshaken and solid principles by which His Majesty founds his right to the possession of the province of West Florida.

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By the treaty of sale of Louisiana, signed at Paris the 30th April, 1803, the United States have acquired the right which France held, in virtue of the retrocession of that province, made to her by His Catholic Majesty, at St. Ildefonso, October 1, 1800. The stipulation, which ought to serve to found the pretensions of the United States, cannot be any other than the third article of the Treaty of Retrocession, which is in these terms: "His Catholic Majesty promises and engages, on his part, to cede to the French Republic, six months after the full and entire execution of the conditions and stipulations herein, relative to His Royal Highness the Duke of Parma, the colony or province of Louisiana, with the same extent that it now has in the hands of Spain, and that it had when France possessed it, and such as it should be after the treaties subsequently entered into between Spain and other States.

The first thing which calls our attention, in explaining the said article, is the expression retrocede, and which also serves to denominate the Treaty of St. Ildefonso, called the Treaty of Retrocession. The sense of this expression is obvious; it cannot be misinterpreted or confounded; its meaning is evidently this: that His Catholic Majesty returns to France the territory which he had received from her. Now let us examine if France put Spain into possession of the territory which occasions the present discussion. It is, without doubt, by the Treaty of 1763, it was agreed that the separation between France and England of their possessions in that quarter, should be by a line through the middle of the rivers Mississippi and Iberville, and the lakes Maurepas and Pontchartrain, to the sea; consequently, France ceded to England the river and port of Mobile, as well as all her possessions on the east of the Mississippi, the island and city of New Orleans excepted. From that time this territory formed a part of the possessions of the English, under the name of West Florida, and France lost all claim and title to it. Thus it became an English possession; and, during the war of 1779, Spain conquered from England all that the latter possessed by the title of West Florida; and, in the definitive Treaty of 1803, England ceded to Spain, under a guaranty, both Floridas. It is then seen, by this plain and simple exposition of facts, that the title by which Spain holds possession of the territory on the east of the Mississippi, called West Florida, was acquired to her by the right of conquest, at the expense of her treasures, and blood of her soldiers; and, also, by the cession made by England under the Treaty of 1783. From that time the title of Spain to that territory is entirely independent of France, and of the cession of Louisiana made by her; and, consequently, Spain could not give back to France what she did not receive from her. We will continue the discussion on the third article of the Treaty of St. Ildefonso.

In the first place, it is said that His Majesty retrocedes Louisiana, "with the same extent of territory which it now has in the hands of Spain." This expression confirms most explicitly the right

which Spain preserves over the said territory to the east of the Mississippi; because it is well known that Spain possesses West Florida not as Louisiana but as Florida. This circumstance, so notorious, is confirmed by the title of the Governors of the Havana, who, in their character of Captain Generals, have always governed under the title of "Captain Generals of the two Floridas;" and by all the most authentic public acts, which have passed since His Majesty has been in possession of the said territory, this title has been preserved. It will be sufficient to mention the treaty concluded between His Catholic Majesty and the United States, in 1795, in the second article of which we read the following words: "that the southern limits of the United States, which separate them from the Spanish colonies of East and West Florida," &c. It is then proved, in the most authentic manner, the separation of West Florida from Louisiana, and their different appellations; and it is a thing generally understood, that names of countries, bartered, ceded, or retroceded by a treaty, should be considered according to the general acceptance existing at the time of making the treaty; it is clear that if, in that of St. Ildefonso, it had been wished to include West Florida, it would have been expressly mentioned by the name which authenticated it, and under which it is generally known: for it would have been ridiculous to have given the name of Louisiana to that territory, because it had once formed a part of that province, as much so, as it would be at present to call the State of Ohio Louisiana; consequently, no doubt remains that, as His Majesty was in possession of the said territory, under the name and quality of West Florida, it could not be included in Louisiana; because it was in the hands of Spain on the 1st October, 1800, the epoch of the Treaty of St. Ildefonso; and because the before-mentioned clause of the third article, in its natural and explicit sense, excludes France from a right to West Florida.

The second clause or expression of the same article, "and which it had when France possessed it," alludes only to the manner in which France possessed it in 1763, when she delivered it to Spain; for if any other sense is given to it, that expression cannot be consistent with the anterior, which says, "with the same extent which it now has in the hands of Spain;" for if in the second clause a greater extent should be given to Louisiana than that which it had in the hands of Spain, how could it be "with the same extent it had in the hands of Spain?" It is repugnant to common sense that the delivery had to be with the same extent and with greater extent; it being with more, it could not be with the same. It is then clear that the obvious sense of both clauses together, and the only one which is not absurd and contradictory, is the following: that Louisiana was retroceded with the same extent it had in the hands of Spain in 1800, and that which it had when France possessed it, and gave it up to Spain. The expression "when France possessed it," not marking any fixed time, it is clear that it ought to be determined by the clauses of the same article;

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since, if we should admit the expression "when France possessed it," in all its latitude, it would result that Spain had obligated herself by the third article to give France a part of the State of Kentucky, all the State of Ohio, and Territory of Indiana, and that France should hold a right, by the Treaty of St. Ildefonso, to resell the said States as a part of Louisiana "when France possessed it," and also to prohibit the navigation and deposit to the Americans, because that France had to receive Louisiana "as she possessed it. Absurd reasoning! which does not merit to be refuted, which arises in consequence of the undefined latitude which is pretended to be given to "when France possessed it." It is a principle incontrovertible of the law of nations, that treaties should not receive an odious or absurd interpretation, when they can admit of a clear and simple one. It would be both odious and absurd to suppose that Spain had ceded Louisiana to France, with all the extent with which she had possessed it at an epoch anterior to the treaty of 1763; for it would thence result that she had engaged to give France part of the United States, as before-mentioned; and it would be equally absurd in France, because she abandoned by the treaty of 1763, all her rights and pretensions to the country east of the Mississippi to Great Britain; and by her treaty of 1778, with the United States, she was bound in such a manner that she could not acquire a territory east of the Mississippi without the consent of the United States, and only by that of conquest. At the same time, it would do very little honor to the United States to maintain an interpretation, the consequence of which would make it appear that that part of the United States formed by the Ohio, a part of Kentucky and Tennessee might be comprehended, and become the object of stipulations and cessions between two foreign Powers, such as France and Spain, who have no right to meddle with them.

The third clause of the third article of the Treaty of St. Ildefonso is still more decisive, and offers other arguments in favor of Spain, since it says, "such as it ought to be according to subsequent treaties between Spain and other Powers." The treaties here alluded to, are not, nor can be, others than those of 1783, between Spain and England, and 1795, between Spain and the United States. By the first, His Majesty acquired the territory east of the Mississippi, under the name of West Florida; and, consequently, to be "as it ought to be," since the treaty of 1793, is with the exclusion of a territory acquired at that period, and with a name so different. By the second, His Majesty permitted the deposit, and fixed the limits between Louisiana, the Floridas, and the United States, to be "as they ought to be" after the treaty of 1795, is with the exclusion of France to the rights of the United States in this treaty. And thus, as the Treaty of St. Ildefonso could not affect the rights which the United States acquired by that of 1795, so neither did it affect, nor could it affect, the rights acquired by His Catholic Majesty, by the treaty of 1783 with England.

It would be unnecessary to accumulate more

proofs in a case so clear in its nature: but I cannot but mention to your Excellencies, in support of the unquestionable right which Spain has to the territory in question, the respectable and undeniable opinion of the celebrated geographer of the United States, Mr. Ellicot, whose knowledge and talents occasioned his being named by the Government of the United States to run the line of division between the said States, and the Spanish provinces on the south of them, according to the Treaty of 1795. This person, who, perhaps, has more knowledge of what relates to the territory in question than any other, in the preface of his work, published in 1803, under the title of the "Journal of Andrew Ellicot, late Commissioner in behalf of the United States," &c. speaking of the sale of Louisiana, made by France, says, dated Lancaster, 22d July, 1802, "It does not appear, by the cession of Louisiana to the United States, we obtain the whole of both sides of the Mississippi: for, by consulting No. 5, of the maps, it will be seen that the island of New Orleans, which lies on the east side of the Mississippi, only extends north to Manchak; from thence, northerly, along the east side of the river, to the southern boundary of the United States, is still held by His Catholic Majesty as a part of West Florida." He again says, "the important and safe harbors in both the Floridas still remain in the possession of His Catholic Majesty." The expressions, so notable, corroborate and confirm, in the most positive manner, the incontestable right of His Catholic Majesty to all the territories which are on the east of the Mississippi, under the line of the thirty-first degree, excepting the island of New Orleans.

Besides what has been said, it cannot be doubted that the treaty of retrocession of 1800 was a contract between Spain and France; and consequently, it was for France to have represented, in case she had not received all the territories expressed in that stipulation. And it is certain that the Prefect Laussat, charged to carry the treaty into effect, being perfectly instructed in it, and being possessed with the intentions of his Government, has expressed himself satisfied with the manner in which it was carried into effect, without his having been put into possession of the territory in question. Thus, the United States, having succeeded to the rights of France, have no ground to pretend to what France has thought did not belong to her.

I could, by an accumulation of various proofs, establish in different ways the incontestable right of the King my master to West Florida; but it appears to me that what has already been said is sufficient, so as not to leave a doubt in the mind of any one who will examine the question impartially, not even in the mind of Mr. Ellicot, who, notwithstanding the love he bears to the Government that employed him, and in whose favor he has wrought, could not do less than give that just homage to truth and justice which they merit.

With assurances of my distinguished consideration, I remain, praying to God to preserve your lives many years,

PEDRO CEVALLOS.

Messrs. MONROE and PINCKNEY.

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Messrs. Pinckney and Monroe to Mr. Cevallos.

ARANJUEZ, *February 26, 1805.*

Mr. Pinckney and Mr. Monroe present their compliments to His Excellency Don Pedro Cevallos, and have the honor to enclose him their answer to his note of the 16th, which was prepared and intended to have been sent yesterday. They avail themselves of the opportunity to acknowledge the receipt of his Excellency's note of the 24th, received last night, respecting the eastern limits of Louisiana, to which they will pay immediate attention.

Messrs. Monroe and Pinckney to His Excellency Don Pedro Cevallos.

ARANJUEZ, *February 26, 1805.*

SIR: We have the honor to acknowledge the receipt of your Excellency's letter of the 16th instant, whose contents and tone have equally surprised us. We should consider ourselves failing in the respect which we owe to our Government, if we did not express our sentiments on it, in both respects. In so doing it is necessary to review concisely what has passed between us.

Your Excellency will recollect that, in our interview which took place immediately after Mr. Monroe had the honor of being received by His Majesty, the objects of his mission were fully communicated, and that it was agreed that we should present to your Excellency a project for the adjustment of every point, to which you were so good as to promise an early and explicit answer. In compliance with that arrangement, we did present to your Excellency, on the 28th ultimo, the project which we had promised, in which we stated, fully, the views of our Government, with its opinion of the rights of the United States on each point; which we illustrated in those cases which had not been already exhausted, and, of course, where illustration could be necessary, or was even likely to be agreeable. We had a right to expect, and we did expect, an answer equally full and explicit to every point. In this, however, we were disappointed. On the claims to indemnity for injuries, your Excellency thought proper, it is true, to intimate, in respect to spoliation, that His Majesty was willing to ratify the convention of August 11, 1802, after the obstacle which occasioned its postponement should be removed; and, in respect to that arising from the suppression of the deposit at New Orleans, that Spain was not accountable for them, but without giving any reason for the assertion. On the great question of territorial rights and limits, as on the mode of providing for their security, and, with it, the peace and harmony of our Governments, on which we did ourselves the honor to make to your Excellency what we deemed liberal and salutary propositions, we received what could not be considered as an answer, since it neither rejected our propositions, offered others, nor expressed any sentiments respecting them. If it was proper to open the whole subject, as was admitted in our first interview, it was equally so to answer it.

And that it was proper so to do, is not only proved by the agreement referred to, but by the situation of the two countries at the present time. The several points, are, it is true, in their nature distinct; yet it is obvious that the whole must be brought into view and settled together. We do not perceive the means, nor has your Excellency suggested them, of adjusting a part, and leaving the others unfinished.

Although we could not but be hurt at receiving an answer so vague and unsatisfactory to our letter, yet we deemed it inconsistent with the respect we owed to both our Governments, to your Excellency, and to ourselves, as with the spirit of conciliation which we wish to preserve through the negotiation, to express that sentiment. We did more; we met the invitation which your Excellency seemed to give us, without, however, furnishing the example, by proceeding to explain further the views of our Government, and illustrate its rights on the two points, on which you had given any opinion. The claims to compensation for injuries arising from spoliation on our commerce, and the suppression of the right of deposit at New Orleans, had been long before our Governments, and their merits were well understood. That for spoliation, more especially, had been so fully and amply discussed, both here and in the United States, as to leave no doubt that such discussion was not necessary to enable either party to make up its mind on it. By entering into it, therefore, we gave your Excellency a convincing proof of our desire to accommodate with your wishes, in the hope that it will produce on your part a corresponding result.

We flattered ourselves, that, as the whole subject was again presented before you, in all its points, with the explanation which you had invited on the two first, we should have received a full answer from His Majesty's Government on each, and, of course, on the whole. In this, however, we were again disappointed. We received, in substance, only the same proposition which had been made to us before, which we had, as we presumed, clearly proved to be incompatible with the rights of the United States, and the principles of justice, and which, as we had taken the liberty to inform your Excellency, the repeated and recent orders of our Government prohibited us from accepting. Under these circumstances we considered it our duty to acquaint your Excellency, respectfully, that we deemed it useless and improper to prolong the discussion on that point; at the same time requesting you to be so good as to communicate the sentiments and propositions of His Majesty's Government on the whole subject, that we might see whether it would be possible, while we avoided discussions of an irritating tendency, to adopt some plan, which, by a general arrangement, might provide for this as well as the other objects, and thereby render justice in the most acceptable manner to all parties. To this proposal, the most respectful and friendly that we could make, one which is warranted by the uniform practice in similar transactions and cases of all Powers, especially the most friendly to each

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other, we received a letter which is addressed in a very different spirit. By it we are charged with refusing to discuss points which we had already discussed, and on which we had given to your Excellency our ulterior opinion; our Government is charged with the dishonorable attempt to obtain a double indemnity for the same object; many of our citizens are denounced as unprincipled contrabandists; and others, if not the whole nation, as enthusiastic partisans, calumniators, and disfigurers of truth, for, in respect to the suppression of the deposit at New Orleans, all America had but one opinion, and spoke with one voice. In the article of the press, the freedom of our internal institutions, which all nations have a right to regulate, and do regulate as suits themselves, is attacked; the right of the Intendant to suppress the deposit at New Orleans is justified; and the right itself, though stipulated and made permanent by a solemn treaty, a stipulation which had its equivalent in the other articles of the same instrument, and was otherwise prompted by the law of nature, of reason, and the interest of Spain, is represented as a gratuitous or charitable donation to the United States, which His Majesty had a right to suppress, and keep suppressed, until their Government should implore him to open it to them again. On this note, we think proper to observe that it was impossible for us to have received one which could have been more unexpected. It was the more so, because, in all our communications, we had been studious, in obedience to the orders of our Government—orders which we executed with pleasure—to manifest its high respect for His Catholic Majesty, and we were not conscious of having failed in that which we entertained for your Excellency.

We forbear to make any further comment on the tone of this last note at present, because it is probable it may convey sentiments which are not entertained. We are aware that, in the zeal of an important discussion, incidents of that kind often occur, and are often prompted by patriotic motives, even with those who are the most guarded. We trust that the character of the American Government and people, which is well known, and we flatter ourselves held in just estimation by other Powers, will not be injured by the spirit of conciliation and moderation which animates us on this occasion. On the presumption, therefore, that no premeditated outrage was intended, and with a sincere desire to adjust amicably the differences subsisting between our countries, we will proceed to answer the several objections urged in your Excellency's last note to what we consider to be the just claims of our Government.

Your Excellency insists that His Catholic Majesty is not answerable for the spoliation that were committed on the commerce of the United States, within the jurisdiction of Spain, in the course of the last war, by French cruisers and tribunals; and you urge, in support of the doctrine, first, that those claims were satisfied by the treaties which have taken place between the United States and France; second, that Spain was not in a situation to prevent those aggressions on

our commerce. We will examine with candor both these pretensions, which, we are persuaded, it will be easy to show are unfounded. Two treaties have latterly taken place between the United States and France; the first on the 30th of September, 1800, the second on the 30th of April, 1803. Permit us to ask, by which of these was such extinguishment made? If by the first, it is not likely that the subject would have been thought of in the second; if the second is relied on, it is an admission that it was not done by the first. Your Excellency seems disposed to rely on both, which cannot be considered otherwise than as a proof that neither alone had done it. It is equally obvious that it was not done by both together, since, whether we examine them separately or together, they expressly preclude the idea.

By the second article of the convention of 1800 between the United States and France, it is agreed, for certain considerations therein specified, to postpone their respective claims to indemnities to a more convenient time; and, by the ratification of that convention, those claims were relinquished forever on both sides.

By the fifth article of the same convention, it is agreed, that certain specified claims or debts should be recoverable in the same manner as if no misunderstanding had taken place between the parties.

By the first and second articles of the second convention, entered into on the 30th of April, 1803, provision is made for the payment of the debts which were comprised under the second and fifth articles of that of 1800, whose amount, it was expressly stipulated, should not exceed twenty millions of livres.

These are the only articles in those conventions which have any reference to the point in question. If the claim of the United States on Spain for French spoliations and condemnations within her jurisdiction was satisfied by the treaties and conventions between the United States and France, it was by one of these articles. We will examine, first, that pretension, as founded on the second article of the Convention of 1800. On a view of that article, and, indeed, of the whole instrument, we find that it regulates only questions and interests that were depending between the United States and France. A misunderstanding had unhappily taken place between those Powers, and it was the object of this convention to adjust it. Not the most distant allusion is made, in any article of the convention, to Spain or her concerns. Had Spain then been a party to that misunderstanding, she could not have been benefited by that convention. The reason is much stronger why she could not, as she was not a party to it, since there was no variance, and there certainly was none between the United States and Spain, it is more evident that it could not have been in the contemplation of the parties to adjust what did not exist. It may be added that, if it had been contemplated to release Spain from any obligation which she owed to the United States, from any just claims which they had on her, the release

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would have been complete; it would have extended to every object, especially of the same kind; and settled every ground of difference between them. The fact, however, is admitted by all parties to be otherwise. It has never been contended by Spain, that the spoliations which were committed by her own people, were satisfied by that convention. Hence it is clear that Spain was not discharged from the claim of the United States for French spoliations committed within her limits, by the second article of the Convention of 1800. It is equally clear that she was not discharged by the first and second articles of the Convention of 1803. It is evident, on a slight view of these last articles, and, indeed, of the whole instrument, that they had no other debts in contemplation but those which were made recoverable by the Convention of 1800; that, in truth, the Convention of 1803 did no more than provide funds for the payment of the debts that were due under that of 1800. Thus the claim of the United States on Spain for these spoliations was not discharged by this last Convention. Other circumstances prove clearly, not only that this claim was not discharged, but that a provision or discharge of it by those conventions was not even contemplated by the parties to them. It is very well known that the Government of the United States never made a demand on that of France for the payment of these spoliations; that it always claimed the payment of Spain, and her only, considering her only as responsible for them. It is not presumable that the parties should intend to provide for a claim not made, for a debt not supposed to be due. The conduct of Spain, through the whole of this epoch, corresponds with that of the other Powers in this respect. The Minister of the United States at Madrid pressed the Government of Spain for an indemnity for that and other claims. Had it been contemplated by Spain to obtain her discharge through the medium of France, her Ambassador at Paris would have been seen in both those negotiations, especially that of 1800; and, had he succeeded, a provision to that effect, in explicit terms, would have been introduced into that convention. But nothing of this kind took place. Indeed, the success of such an attempt was so improbable, that it is not presumable that the idea ever occurred. With the claims that were in the contemplation of the parties, and for which France was truly answerable, it was difficult to accomplish an amicable adjustment of their differences. Had these been swelled by the addition of those on Spain, it is probable that the negotiation would have proved abortive. It was not until some years afterward that this pretension on the part of Spain was heard of, and then it was founded on a pretext as singular as it was unexpected—that of her being released by a treaty between the United States and another Power, in which she was not even mentioned. With respect to these claims having been discharged by the Convention of 1803, it has already been shown that that convention could not, by any possible construction, be considered as having any reference to the subject; it may be added, that the

funds provided by it were not only intended for other objects expressly stipulated, but that there is reason to think they are not commensurate with those objects.

As to the pretension that Spain was released from this claim, by the release made to France of other claims of a similar nature, it is easy to prove that it has not the slightest foundation. It has already been shown that France was not released from this claim, because it was never made on her. We shall proceed to show that it was properly made on Spain, and that she was, and is still, answerable for it.

It will not be controverted that it is the duty of every independent State to observe, that the citizens or subjects of every other independent State are secured, in their intercourse with it, in the enjoyment of all the rights and privileges to which they are entitled by the law of nations, and treaties with such Power. This principle forms the basis on which the whole system of public law rests. It is the standard by which every question between independent Powers must be examined, and their respective rights in all cases settled.

It is equally true that, for every violation of those rights on the citizens or subjects of one independent State within the jurisdiction of another, the Government of the latter is responsible, whether the same be committed by its own people, or those of another Power. The reason of this rule is obvious. Every Government being sovereign within its own limits, the subjects of every foreign Power are regarded there for the time as its own subjects, and, as such, it is responsible for their conduct. While such Government retains its independence, it cannot divest itself of this duty, or the obligation to discharge it. The principle is the same, whether such acts be performed by the private individuals of a foreign Power, or its public agents. In the latter case, indeed, the claim to an indemnity by the party injured, on the Government under whose jurisdiction it was received, is stronger, since, being done under color of public authority, and especially if persevered in, they become the acts of the Government itself. These principles are too well established by writers on the law of nations to require further illustration.

Hence it appears clearly that Spain was answerable for French spoliations committed under her jurisdiction, in the same manner as if they were committed by her own people. To her, then, the American Government was bound to look for reparation. Whether France was eventually liable or not, is not material to inquire. Where was the injury rendered? What Government had cognizance of the case? Whose laws were violated by the proceeding; or by whose laws was the injury permitted, or, what amounts to the same thing, suffered? By that Government is the reparation due, and by it ought it to be made. If France has actually paid any of those claims, such payment will, of course, be considered as a discharge. That the suffering individuals may have applied elsewhere and everywhere, to save

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themselves from ruin, or rather retrieve themselves from it, is possible; but neither will the course which their distresses may have compelled them to pursue, nor will the fortune of some particular applicants, in case any have succeeded, affect the merits of the present question. It is known that the sentiments and conduct of the American Government have invariably been the same on it. It has thought, in every stage, that Spain was responsible for those spoliation, and it has uniformly sought the indemnification of her, and of her alone.

If France was responsible for those claims, the injuries having proceeded from her officers and agents, it was only eventually in case satisfaction was not obtained of Spain; for, as already shown, having been committed under the jurisdiction of Spain, where she only had authority, the redress was strictly due by her. For injuries committed by a Spaniard to an American citizen at Paris, we should not think of making application for redress to the Government of Spain, nor for like injuries committed at Madrid by a Frenchman, to the Government of France. The application, in both cases, would be to the Government having jurisdiction of the territory where the offence was committed, and of course cognizance of the case, to the Government whose laws were offended, and who had the power of redress. If France was eventually answerable to us for those claims, which we deny, we admit that she was released from them by the Convention of 1800. But can Spain, who was answerable primarily, if not solely, to whom application had been made, to whom it was then, and has since, been made, claim an exemption from them, under a treaty to which she was not a party, and in which her name was not even mentioned? We are of opinion, by the uniform and well-established doctrine of the law of nations, by the clearest principles of justice, that she cannot.

With respect to the opinions which you have been pleased to communicate to us of the Minister of Foreign Relations, and the late Ambassador of France, on this subject, we have received them with the consideration which is due to every respectable authority from which they emanate. We are not willing to believe that they oppugn the principle above laid down, or apply to those cases which are justly chargeable on Spain, because our Government, for the reasons above stated, and by the clearest conviction, thinks otherwise. On all treaties between independent Powers, each party has a right to form its own opinion. Every nation is the guardian of its own honor and rights; and the Emperor is too sensible of what is due to his own glory, and entertains too high a respect for the United States, to wish them to abandon a just sense of what is due to their own. We do not believe that the view which our Government takes of this subject was ever presented to that of France, since we are not aware that there ever was an occasion for it. By those treaties with His Imperial Majesty, all differences between the United States and France were happily terminated, and the relations of the

two countries placed on a footing of permanent friendship. In all questions growing out of them, in which France and the United States are interested, their Governments are perfectly of accord. We should regret much if they were not so, in the present case, as, indeed, in all others between the United States and Spain.

As to the doctrine held by certain respectable professional characters in the United States, whose opinions have been asked and given in this case, that France and Spain were associate parties in the injuries complained of, the former as principal, and the latter as accessory, we are sorry to be called on to make any remark on it. Delicacy for those gentlemen makes this an unpleasant duty. From that motive we will confine what we say to the doctrine itself. We will admit that we have not made up our minds to a censure of their conduct, since, if such an interference is justifiable under any Government, it certainly is so under that where it is their happy destiny to dwell. In noticing their opinion, we have to observe, that they have evidently mistaken the case, by applying to nations a maxim of local political law, which is applicable only to individuals. Among nations it is believed that there is no such thing as principal and accessory. All are principals, and are to be regarded as such, in all their transactions. In case of a war, to which there are several parties, allies on each side, nothing is more common than for one to make its peace, and withdraw from it. It was never contended that an adjustment made by one party, in such a case, or any other, settled the differences of the other party. The doctrine of principal and accessory, of a release or discharge to one Power, by virtue of an accommodation with another, was never heard of among them. Indeed, it would be strange if any one nation should undertake to adjust the concerns of another, without its authority. It would be more so if any adjustment between two parties should be so construed as to produce an important benefit to a third, not only without its authority, but the knowledge of any one of them. Suppose that an adjustment made by one of the parties for a third one, should be highly detrimental to it, would such a third party be bound by it? Had France, for example, stipulated that Spain should pay for all those spoliation, and a great proportion of her own, would Spain have allowed her right to do so? Ought she, then, or has she a right to claim any advantage from a transaction to which she was not a party, by which she could not be bound, and which, in its nature, could not be reciprocal?

With respect to the plea on which the opinion of those gentlemen is, in part, founded, that Spain was not in a situation to prevent those violations of her territory by France, and is, therefore, not accountable to the United States for the injuries resulting from them, we find ourselves precluded, by the high respect which we entertain for His Catholic Majesty, from dwelling on it. We shall be permitted, however, to observe, that we utterly deny the fact. Spain was never placed in that dilemma. Having, from very remote antiquity,

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held a very distinguished rank among the Powers of Europe, she still enjoys it. In a late war with France, nothing occurred which placed her in the condition of a conquered nation. Her troops behaved with gallantry in the field, and her Government obtained an equal and honorable peace. If, then, she did not prevent those violations of her territory, it was not because she was not able to do it, but because they were sanctioned by some treaty which secured her, in other respects, an equivalent; or that she chose to permit them from some motive of policy at the time; in either of which cases she is responsible to the United States for the same.

We have thus answered fully the arguments urged by your Excellency against the claim of the United States on Spain, to an indemnity for the spoiliations on their commerce by the cruisers and tribunals of France, within the territory of Spain, in the course of the last war, and we are persuaded, shown, in the clearest manner, that that claim is well founded. We should have gone more fully into this point on our former notes, had we not believed that it was already fully illustrated by the communications which had taken place on it between our Governments, in the United States and here, to which we beg leave to refer; a note of which latter is here annexed. We have, however, been happy, at your Excellency's suggestion, to review the subject, being very solicitous to prove, on all occasions, that our Government make no claim which is not founded in justice; and being likewise so to avail ourselves of every suitable opportunity to give new proofs of its respect for, and desire to preserve the most friendly relations with, His Catholic Majesty.

On the point respecting the suppression of the deposit at New Orleans, we regret that it is altogether impossible to assent to the doctrine which is insisted on by your Excellency. On a careful perusal of the treaty, we find in it nothing which justifies the idea that there ever was to have been a moment of interruption of the enjoyment of that right, either at New Orleans, or at some other suitable place on the banks of the Mississippi. It is not, it is true, stipulated that, in suppressing the existing deposit, and opening another, the Government of Spain should give notice of the design, and hold communication with that of the United States on the subject. On the other hand, it may also be said, with equal truth, that it is not stipulated, in taking that measure, that that friendly proceeding should not be observed, but that His Majesty may do it, and keep the deposit altogether suppressed until the Government of the United States should make application for the opening of it. In all such cases, the policy of the measure, the object of the treaty, and intention of the parties, are to govern in the interpretation of it; and, by these, it appears to us to be questionable, that another deposit ought to have been opened at the moment the existing one was closed. It is on that principle that the United States consider themselves entitled to an indemnity for the injury which was sus-

tained by that measure. What the precise amount of that may be, it is not in our power to state; from what we have understood, however, it is by no means of the trifling nature your Excellency seems to suppose it. We have not sought, as an indemnity for it, any precise sum. We have only proposed that it should be referred to the judgment of impartial arbitrators, on such proof as might be presented before them, to estimate it—a proposition which we deemed too just and reasonable to admit of objection.

On the subject of limits, and others incident to it, having already stated to your Excellency the views of our Government, we deem it necessary only to refer again to our former communications. As neighbors, desirous of living together in peace and friendship, it is certainly an object of essential importance to adjust and arrange these very interesting points at this time, in a clear, definite, and satisfactory manner. At an epoch so extraordinary, and big with such important events, it may be productive of much harm to leave anything unfinished, and thereby exposed to casualty. In cases of unsettled boundary, especially, where the pretensions of the parties differ, and those of either may be carried, under colorable pretenses, to great height, there is always danger, by delay, of their becoming the cause of serious controversies, and even of destructive wars. Aware of this danger, the President of the United States is sincerely desirous of averting the evils incident to it, while it is practicable. It is with that view that he has sought, by the present negotiation, to settle amicably and finally all the points depending between the two nations.

The propositions which we have had the honor to make on this point are deemed reasonable and just, and we flatter ourselves that they will be so considered by His Majesty's Government.

We have now the honor to submit to your Excellency again the full view of our Government, on all the points depending between the United States and Spain, and, in so doing, consider it our duty to repeat what we stated in our former notes, that it is equally incompatible with justice, as it is with our instructions, to enter into any arrangement relative to claims for spoiliations which does not provide, in some equitable and satisfactory mode, for the whole. To reserve a right, in respect to those which were committed by French cruisers and tribunals, without making provision for it, could at this stage be considered in no other light than an abandonment of it. We have forborne to state, in detail, the extent of these injuries, comprising, in the whole, two hundred and seventy-two vessels and cargoes, or the aggravated circumstances attending many of them, which have involved in ruin many of our most respectable and wealthy citizens, because it has been our object rather to heal than to open wounds. It is well known that, at the time these injuries were rendered to our citizens, there did not exist, on the part of Spain, the slightest cause of complaint against the United States, whose Government, peaceable and friendly, has borne them with a patience and moderation of which history furnishes

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no example in equal degree. Many years have elapsed since these injuries were received; during which time, the sufferers have looked to their Government for relief without effect. Their last hope is founded on this negotiation, and great would their astonishment and disappointment be, if they were told that more than one-half of them were to be abandoned. We repeat, however, what we took the liberty to state in our letter of the 12th instant, that, if it is possible, on being possessed of His Majesty's sentiments and propositions on the whole subject, to provide by a general arrangement for this and the other objects, in any mode consistent with our duty, which may be satisfactory to him, we shall be happy to do it.

We beg your Excellency to accept the assurance of our high consideration and respect.

CHARLES PINCKNEY,
JAMES MONROE.

His Excellency Don Pedro Cevallos to Messrs. Monroe and Pinckney.

ARANJÚZ, Feb. 28, 1805.

GENTLEMEN: I have received your esteemed note of the 26th instant, in which you reply to mine of the 16th; and before I make the observations necessary in answer to the same, it appears to me indispensable to satisfy, by a separate letter, the complaints of your Excellencies on the tone and expressions of my said note. The King, my master, being animated by the most sincere sentiments of friendship and distinguished consideration towards the United States, your Excellencies will be pleased to do justice to these sentiments of His Majesty and to mine, as being persuaded that I, who have the honor to be the interpreter of them, could have no design nor the most distant idea, I do not say to injure, but even to be wanting in those manifestations of consideration and respect for the United States, and their Government, to which they are so justly entitled. Commencing with this declaration, your Excellencies will permit me to examine the different expressions of my letter of the 16th, which have given rise to your complaints. Your Excellencies say, in the first place, that, on my part, I impute to you a refusal to discuss some of the controverted points; but if your Excellencies will take the trouble to read my note a second time, I hope you will acknowledge that I am far from imputing anything on that subject, and that I only wished to say on it, that, while your Excellencies believe it useless, or incompatible with your instructions, to continue the discussion upon the indemnifications reclaimed for injuries committed by the French privateers, as I understood by the expression of your Excellencies, "it seems useless to prolong the discussions on that point," I found myself obliged to treat the subject less extensively than I thought I could, not to molest your Excellencies too much on it. I am far from supposing that this could involve the smallest disrespect, as it is only reducing it to a difference of opinion, your Excellencies believing that the point was sufficiently discussed, and I, that it wanted to be

a little more so. In the second place, your Excellencies show yourselves dissatisfied that I have expressed that the claim of your Government for satisfaction for French spoiliations should go to demand two indemnities for the same debt, which expression your Excellencies believe injurious to your Government; but your Excellencies will permit me to observe, that to demand two satisfactions for the same thing would be dishonorable to the American Government, knowing itself already satisfied by France, should still demand satisfaction of Spain; but as your Government does not believe itself satisfied by France, it cannot be dishonorable to pursue its demand of satisfaction from Spain, while it continues in the belief that it has not received satisfaction from France. Spain, on her part, believes she has shown that the United States have received satisfaction from France, and it is in this belief she may say that the United States claim two satisfactions for the same debt; more she cannot say, nor have I said, or thought to say, that they claim it with improper designs, knowing they demand two satisfactions, or that they believe they demand more than one; in which there is nothing dishonorable; although the United States might be mistaken, as Spain believes they are, in founding her belief in reasons which I have already explained to your Excellencies, and thinking, on this occasion, exactly in conformity with the opinion of the most enlightened jurists of your country.

In the third place, your Excellencies complain that, in my note, I have denounced many of the citizens of the United States as contrabandists; on which your Excellencies will permit me to observe, that I do not find anything of this in my letter in positive terms, but in doubtful ones, as the expression denotes, "it will not be extraordinary;" a doubt which the representations of those employed in the royal revenue have given rise to, whose truth I do not pretend to guaranty; nor does the doubt fall upon many of the citizens of the United States, but upon some very small numbers of them, as they very often use much in this sense, although there have been but one or two cases. I do not see the injury that can arise to the American nation in expressing a doubt that there may have been some individuals concerned in contraband business, or giving pretexts to Spaniards to do so; nor have I either attempted to discriminate between the two.

In the fourth place, your Excellencies complain that I have said that some of the Americans, carried away by party spirit, had calumniated Spain on account of the deposit at New Orleans, and have disfigured what has happened in the capital; and your Excellencies suppose that I designed likewise, in a manner, to attribute this to the American nation, the whole of whom, you say, had but one opinion on the subject of the deposit. On this point I cannot do less than feel myself hurt at the construction which is given to my expressions: in my letter I cannot find a single expression which can have the most remote allusion on the subject, either to the American nation, or its Government; it treats only of some individu-

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als; and so far from making the least reflection on the conduct of the American nation and its Government, during the suspension of the deposit, on the contrary, I have afforded many proofs of the satisfaction the conduct of the American Government has given on that occasion; notwithstanding it is not less certain what I have said, that there were some individuals, especially some writers, who published things on that subject injurious and calumniating to Spain, and the result of which was, that some of the inhabitants of the Western States, (as was not extraordinary,) not knowing the truth of the facts, suspended the shipping their produce to New Orleans, and suffered other injuries not imputable to Spain. In the first days of the suspension of the deposit, it was published by some North American, that the navigation of the Mississippi was obstructed; this was a falsehood, whose currency was injurious to the good faith of the Spanish Government, which had stipulated for the free navigation of the said river, and at the same time was prejudicial to the inhabitants of the Western States, who, remaining in this uncertainty, did not choose to undertake a voyage of such length, while there was danger of the outlet being interrupted. Afterwards, they said, and it was repeated in the writings and speeches of some individuals, that the suspension of the deposit, and what they might expect respecting the navigation, flowed from France having influenced Spain to take upon herself the odium of this measure, that France might receive Louisiana free from the obligations imposed by the Treaty of 1795, than which there could be no expressions more calumniating and unjust; it being an indubitable fact that, in the treaty of retrocession of Louisiana of the first of October, 1800, His Majesty had taken the most scrupulous care to secure the rights of the United States in the clause of the third article, which says, "telle qu'elle doit être après les traités passés subséquentement entre l'Espagne et d'autres Etats." As to what respected the "enthusiastic partisans," of which I spoke in my note, your Excellencies will permit me to remind you, that I alluded to the attempts of some of the inhabitants of the Western States, who (as the public papers then announced) showed a disposition and design to descend to Louisiana with an armed force, and, without other legitimate authority, to take justice into their own hands; on which occasion there now exists, in the office of the Secretary of State of the United States, the representations of His Majesty's Minister to have such attempts chastised and corrected. These are the attempts to which I allude in my note of the 16th, and on no account to the conduct of the American Government and nation, which was prudent and just. But can it be denied that the consequence of these errors thus published, and which were, that some or many of the peaceable inhabitants did not carry their produce to New Orleans, are not to be, nor cannot be, attributed to the act of the Intendant, but to the occurrence which took place in the said country. There is nothing in my note which has reference to the liberty, or otherwise, of the

press, nor with the institutions of the American Government, which, as your Excellencies observe, every Government is free to regulate as it pleases, but I only insinuated that the writings published with this motive, gave to the western inhabitants a wrong idea of what passed in New Orleans, and that this was not imputable to Spain, or the edict of the Intendant.

This, and this only, is all which I wished to say in my note of the 16th, in which I am extremely sensible that, contrary to my intention, your Excellencies have found motives for complaint; to remove which, it appears to me proper immediately to enter into this explanation, which, although somewhat diffuse, will, I hope, have answered the end I intended. It appeared to me proper to do this in a separate letter, reserving to myself to answer, with all possible despatch and brevity, the other points contained in your Excellencies' esteemed note of the 26th.

In the interim, I renew to your Excellencies the demonstrations of my distinguished consideration and esteem. I pray God to preserve your lives many years.

PEDRO CEVALLOS.

His Excellency Don Pedro Cevallos to Messrs. Monroe and Pinckney.

ARANJUEZ, *March 4, 1805.*

GENTLEMEN: Immediately after I received your esteemed note of the 26th ultimo, I believed it my duty not to lose a moment in replying to the complaints you had been pleased to make on some of the expressions in my note of the 16th; it not being consistent with my sentiments to let your Excellencies remain for a moment in the suspicion that I was wanting, in any degree, in the respect due to the United States or its Government, or to persons so respectable as your Excellencies, not only in your individual capacities, but as representing the Government you do. I flatter myself I have removed, by my note of the 28th ultimo, all motives for those complaints; but if any doubt should still remain on that subject, I am equally ready to satisfy it, should your Excellencies be pleased to express it.

This done, I proceed to examine the other points contained in your note above mentioned of the 26th. It is certain that, in my first letter of the 31st January, I did not enter upon the points in dispute between the two Governments; but it appears to me that, in my belief, it was somewhat premature to begin to examine projects of a convention upon all the points, without analyzing them first, and fixing the right of each country as far as possible; because, as your Excellencies well know, before we can proceed to a convention upon the whole, it is necessary to know as distinctly as we can what are the rights and obligations of His Majesty and the United States. This knowledge of the detail ought to be the beginning of the negotiation; because it is clear that, according to the extent which they suppose the rights or obligation of each party ought to have, so ought the

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convention for the whole to be the more or less enlarged. This is what I believed your Excellencies wished to remark in your first note, by the following expression: "Each of the depending points between the two Governments ought to be examined impartially, and all motives of complaint and inquietude considered and terminated amicably, and to do which it is necessary to determine the respective rights," &c. Understanding it thus in my first note, I did nothing more than enumerate the points on which it appeared to me we had to fix our respective rights, and to request your Excellencies' opinion as to the order in which they should be treated. In my second of the 10th ultimo, I spoke of the reclamations for injuries committed by the individuals of both nations, and told your Excellencies that His Majesty was disposed then to terminate this point; and at the same time spoke, but not extensively, of the damages committed by the French privateers. In my third note of the 16th, not to molest your Excellencies too much, I touched shortly on the same subject, and treated of the damages occasioned by the suspension of the deposit; and, lastly, under date of the 24th, I commenced the examination of the limits of Louisiana, with those which relate to the eastern boundary.

In the context of all the letters together, and of that which I promise to transmit, respecting the western limits of Louisiana, I hope your Excellencies will see I have not omitted entering upon all the points contained in your esteemed notes, only with the difference alluded to from the beginning, that it appeared to me most proper and clear to treat each point separately, according to its different nature.

It is true that, to the present time, I have not been able to say to your Excellencies, as you wish, what is the disposition of His Majesty upon the whole; but the reason is, as I have thought from the beginning, that it is not possible for His Majesty to determine what part he will adopt upon the whole, without being clear what are his rights or what his objections on each particular point. This examination being made, your Excellencies ought not to doubt that His Majesty will be ready to enter upon such a convention as shall be judged proper to conclude the claims and promote the interest of both parties. The King wishes to give proofs of his friendship and good neighborhood to the United States, and to fix them in the most permanent manner.

Having said this, and proceeding in the order of the notes which have passed between us, I must stop to remark a little on the reflections which your Excellencies have made, as to the assertion that Spain is persuaded that the United States are satisfied for the damages occasioned by French cruisers in her ports and on her coast. Your Excellencies wish to know by which of the conventions that have been made between France and the United States, Spain believes these damages to have been satisfied. I answer by that of 1800, and by the context of its ratification. In speaking of the second convention, it is only, as your Excellencies yourselves say on this subject,

an explanation or compliance with the first; or, to go to the point at once, one of the reasons which convinces Spain and induces her to believe that she is not responsible for the damages occasioned by French cruisers in her ports and on her coasts, is, that it is notorious that the United States have agreed with France to consider themselves as satisfied for all the damages they have received from her (France) during the last war.

It is true, in the convention no mention was made of Spain; because, in the manner in which they treated, it was absolutely superfluous to do so, and the high contracting parties considering it so, omitted without doubt to mention that which, by the nature of things, could not be less than a necessary and inevitable consequence of what they stipulated. Nothing is more common in law, than that an act between two parties may be, by its nature, and even independent of the will of the contracting parties, general to a third: for example, if a creditor releases a debtor what he owes him, this act between the two is general to the security of the debtor, who, by the nature of things, remains released, although no mention is made of him, and, what is more, although both creditor and debtor have wished that he should not be released; because, by the nature of things, it is impossible the security should remain when the principal obligation has disappeared. In the same point of view ought to be considered the obligation of Spain, if ever there did exist any from the United States, with respect to the damages committed within her jurisdiction by French privateers. France was the offender, and, of consequence, the obligation, and the act of agreement which released France, extinguished the obligation, which was one and indivisible, as justly observe the learned gentlemen of Philadelphia. The release of this claim supposes the same thing as the receipt of satisfaction, and no other can be demanded without requiring two satisfactions for the same offence, which are the identical words of the said learned gentlemen, (from whose answer I took them, when I inserted them in my note of the 16th,) and as the same gentlemen observe, if the Power A (that is, Spain) was yet responsible, and paid to B, (the United States,) Spain could then apply to France to be reimbursed, as she was the offender, and France would not gain anything by the release of the United States, which would become, by this indirect mode, null; and as it is very evident every legitimate act ought to carry within itself everything that is necessary for its validity, it is undoubted that the convention between the United States and France ought to be general to Spain, as much as is necessary for its validity, that is, absolving her from her responsibility, if she had any; because, on the contrary, by the United States reclaiming against Spain, and Spain against France, the latter would, by this indirect mode, have at last to pay for the damages occasioned by her privateers.

Your Excellencies, knowing well the force of this reasoning, attempt now to establish that Spain

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is the principal obliged for the said damages; that her obligation is not accessory, as presume the learned gentlemen of Philadelphia, who you say have confounded the case, applying the maxims of municipal law to nations, among which there is no such thing known as principal and accessory; and, finally, your Excellencies deny that France can be responsible for the damages committed by her privateers on the coast and in the ports of Spain, and admit that at the most, it can only be eventually so. But I cannot for my part conceive how these assertions can be supported. In the first place, I am persuaded that the principle of universal justice, on which the learned gentlemen have founded their opinion, is as applicable to nations as individuals: nations as well as individuals are bound by them; if an individual releases a debtor nothing can be demanded of the security; so, if a nation confesses itself satisfied for a claim it had against another, the same cannot be repeated against a third, although she bore a part in the responsibility; the reason of this is not a principle of municipal law, as you say, but an eternal and imprescriptible principle of universal justice, which is, that two satisfactions cannot be demanded for the same debt. Your Excellencies say, among nations, that they know nothing of such things as principal and accessorial obligations; but I do not agree to this. Among nations, as among individuals, they may have accessorial obligations, by mutual agreement, and also by the nature of things, since, if two nations agree in an act from which results responsibility, for example, an injury or spoliation, it is indispensable that the responsibility and the obligation shall be proportioned to the intervention each party had in it; that which committed the injury shall be first responsible; that which did not avoid it when she could and might, shall have less responsibility, having had less to do in committing the act, and this second responsibility may be called accessorial, or eventual, if your Excellencies prefer that term: in which I observe, that if your Excellencies acknowledge the possibility that there might be eventual obligations between nations, I do not know how you can refuse to admit the possibility of accessorial obligations; as, to my judgment, it is the same idea, but only expressed by different words. But, in the present case, if we were even to suppose that Spain and France, the first accessory, and the latter principal, associated, and both being principals, it will come to the same thing; the obligation having disappeared by the payment of France, Spain remains released, as the obligation was one and indivisible.

Your Excellencies will say that in the case on which we treat, Spain was the principal, and not only so, but the only one bound: but to me it is inconceivable how Spain can be considered, in any manner, as the only one bound; because it is not possible to imagine how France, who was not at war with the United States, could seize, condemn, and appropriate American property, without incurring some responsibility on her part; it would be a case never seen or heard of, and which combats all principles, and is contrary to common

sense. We will see, at least, if Spain can be said to be the principal obliged.

It is evident that the obligation which an offender has to repair his offence, and the right the offended has to demand reparation, arise in the same moment that the offence is committed. Let us apply this principle to what has occurred with respect to French cruisers and American vessels. Spain was in alliance with France, and the two at war with Great Britain; of consequence, the French had a right to arm privateers, and the Government of Spain to permit them to arm in her ports. They armed against the subjects of Great Britain; but when they went out, they committed infractions, and violated the rights of other nations; and these are things which in reality the Government of Spain neither could foresee nor check. It results from this that these offences existed and might exist before Spain knew anything of it, and that, of consequence, the right of satisfaction existed before she had knowledge of the fact, and existed against the aggressor, which, without doubt, constitutes the principal obligation. When Spain might, if at all, with more propriety, be considered as accessory, was after her knowledge of the offence; but in reality she ought not even then to be considered as such, because the injury terminated and was completed by the definitive sentence which took place in the tribunals of France, in which they efficaciously and finally decided the sale of American vessels. In proof that the Americans who were injured considered this subject under this aspect, we find the tribunals of cassation full of the demands of those interested in vessels taken within the jurisdiction of Spain, and that these applications are supported, as I am informed, by the officers of the American agents in France; but, as when they pleased, it is evident that the United States, not being at war with France, always had the door open to commence their reclamations against her, this circumstance, in the present case, constitutes a most essential difference.

1st. Because the offender not being at war with the United States, could not be less than the first, if not the only one responsible for the illegitimate act.

2d. Because the United States had the door open to make the demand of the Government of France, and thus had direct communication with the offender, which could not be the case if war was declared.

3d. That Spain not considering the United States as in war with France, could not foresee the excess that cruisers armed in her ports against England might commit against American citizens, nor less avoid the definitive sentences of the tribunals of France which completed the offence. Besides, it is well known that, among civilized nations, it is customary to demand from privateers a bond or security that they shall not cruise except against the enemies of the State; and as this bond or security could not exist but in France, it is a proof that it is there they ought to go to seek the responsibility, that is, in France; and the United States having renounced this, or being satis-

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fied for these damages, nothing can be demanded of Spain. If upon this point there could remain any doubt, the positive affirmation of the Government of France, that they are satisfied, is sufficient to make it vanish. The Government of France ought to know without doubt, what were the offences she satisfied, by the convention of 1800; and it is not credible she would venture to say it was concluded, without a strong and intimate persuasion and conviction it was so, and which comes with great force from a third Power, who does not find herself immediately interested in the present discussion, as are Spain and the United States. On the other hand the information of France is of the greatest importance to establish the rights of Spain in this case: because if we suppose for a moment that Spain did pay to the United States the damages arising from the spoiliations of the French privateers, there is not the least doubt she would immediately apply to France to be reimbursed; but she would, in reply, very justly refuse the reimbursement, saying that Spain had done wrong to make the payment, as France had previously communicated to her that the United States had been satisfied.

I have not attempted to avail myself of the argument, as your Excellencies seem to suppose, that Spain could not prevent the injuries committed against the American vessels, although it was in a great measure the case; because it was not possible to prevent injuries of which we had no knowledge, such as the French privateers committed, which were armed in our ports against the English: my defence is founded in the assertion that the said damages are already satisfied by France, and so did the learned gentlemen of Philadelphia understand it, when, in their argument, they say, "but even leaving impossibilities out of the question, and admitting that the Power A could have prevented the injury which was committed by the Power C, in that case the Power A is no longer liable to any responsibility in damages on account of its acquiescence."

I have insisted principally on this method of defence, because, founding it in an act clear and notorious, and of the most easy examination, it appeared to me to be the most convenient to repel a claim which Spain could oppose with many other reasons and arguments.

It is not demonstrable that a nation is obliged to satisfy the damages and injuries committed on her coasts by the subjects of other Powers, and cases without number might be cited to the contrary among civilized nations. Denmark had her ports open during the last war to the belligerent Powers, and condemnations of prizes were made in them without there being, on this account, any responsibility demanded of her; many other neutral Powers suffered, during the same war, various damages from the French cruisers on the coast and in the ports of Spain, without having demanded any other thing of Spain than to interpose her good offices, and co-operate in obtaining redress for the injury. Spain, when she has been injured, has not demanded such indemnifications, and has only demanded that the Government

whose flag or coasts have been violated should pass efficacious offices for the reparation of the offence. This, and this only, is all to which Spain obliged herself by the sixth article of the treaty with the United States, in which, after offering defence and protection reciprocally for the vessels of both countries within the extent of their respective jurisdictions, it says, that, in case of offences of the nature of which we treat, each Power in whose jurisdiction it is committed, shall employ all its efforts to recover and have restored to the lawful owners, the vessels or effects which have been taken within the extent of its jurisdiction; from which it results, that the only thing which it can be pretended Spain has obliged herself to, is to employ all her efforts to recover and have restored the vessels and effects so taken; but in no degree exists any obligation in her to make reparation, should such efforts not produce the desired effect: because, if it had been the intention of the high contracting parties to do this, it would have been expressly stipulated. As, on account of this article, your Excellencies pretend to be persuaded that Spain is the only one responsible for the excesses of the French privateers, I could not omit observing that the obligation of the Power which has to restore could not but be greater and more principal than that whose obligation only is reduced to the making efforts that they might be restored; and that France being in the first case, and Spain in the second, it cannot but follow that the principal obligation rests on the first, and only that of accessory on the second.

Proceeding now to the damage occasioned by the suppression of the deposit at New Orleans, I will endeavor, also, to answer with the utmost brevity possible, your Excellencies' remarks in your esteemed note. In the first place, your Excellencies will permit me to declare, that I see with regret that, in what I said in mine of the 16th, as to the deposit at New Orleans, being a generous and gratuitous concession of His Majesty, and other parts of my letter, I did not explain myself as I wished. Your Excellencies understood that I wished to say that the deposit, not only in the capital, but on any other point on the bank of the Mississippi, was a charitable donation of His Majesty, revocable at pleasure, either before or after the three years fixed for its being at New Orleans; and that it might remain revoked until the United States implored His Majesty anew to restore it. It is not honorable to me that such assertions should be attributed to me; I said, and it was my intention to say, that, in its origin, the right of the deposit granted to the United States in New Orleans flowed from a wish in His Majesty to grant it generously, and oblige himself to maintain it there for three years, as a convenience to the United States. Nothing is more common than for a nation to impose on itself an obligation, gratuitously, in favor of another, without more interest than the satisfaction of having done it a useful service without injury to itself. After making the stipulations and conclusion of the treaty of 1795, there was, no doubt, an obligation to maintain and comply with it; but, in the case of the

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deposit, there are two things essentially distinct, which ought to be considered: the deposit at New Orleans, and the indefinite deposit in some other place on the banks of the Mississippi. The three years being over, and injury arising to the Royal revenue from the continuance of the deposit at New Orleans, to have continued it there, notwithstanding, cannot be considered less than as a favor of the King my master, because no obligation existed on his part to do so; and, if the United States had desired that the deposit at New Orleans should have continued in a manner not precarious, but established and obligatory, it was necessary to have a new stipulation, because His Majesty was not obliged to do so. At present, as to what regarded the right of deposit in the other place, the United States did not require a new stipulation, because they had it by the treaty; but, as the new place was not established by the treaty, it is clear the United States had to ask the fixing of it on the spot which they thought convenient, or the two Governments had to understand each other in the establishing it; for, as it was to be fixed to the satisfaction of the American Government, Spain could not do it alone, or without saying what were the qualities it ought to have to answer their ends. The difficulty is not in this, which is in itself simple, but, it is in examining its situation after the end of the three years in the capital, and the other four years in which His Majesty generously continued it there, being under no obligation to suffer the inconveniences which were encountered in the said four years. And the question now is, whether he could or not suspend the deposit in New Orleans before agreeing with the parties concerning the fixing another; or in other words, after the conclusion of the three years of the deposit at New Orleans, the King was obliged to suffer the inconveniences of its continuation, until they could enter into a convention or agreement respecting another place; or further, if the United States could in rigorous justice be made to suffer the intervening inconveniences of the suspension for the time necessary for the two Governments to agree upon the fixing it. The treaty says nothing of this; and I hope I have shown that good neighborhood or friendship should have permitted for a short time the inconvenience of the deposit at New Orleans before proceeding to suspend it, and for this reason His Majesty revoked the edict of the Intendant. But speaking of what, in rigorous justice, can be supposed to be due to the solicitude of being indemnified for the same, I am of opinion, that, as the treaty said nothing about it, His Majesty was not obliged to continue the deposit at New Orleans, nor to suffer its inconveniences; although he was bound to consent to its establishment in another place, on which His Majesty could not determine alone, it being necessary that it should be fixed equally to the satisfaction of the United States. I repeat, that it is not my intention to approve the conduct of the Intendant, nor to diminish the rights of the United States under the treaty, but to examine points unsettled in it, and to deduce from thence whether Spain was or was not liable for the in-

demnifications arising out of the suspension of the deposit at New Orleans—an examination which may in my opinion have been excused, from the short duration of the existence of the injuries which might be considered as really attributable to the edict of the Intendant.

I beg your Excellencies to accept the assurances of my respect, and hope that God will preserve your lives many years.

PEDRO CEVALLOS.

Messrs. Pinckney and Monroe to Mr. Cevallos.

ARANJUEZ, March 8, 1805.

SIR: We have now the honor to answer your Excellency's note, of the 24th ultimo, respecting the eastern limits of Louisiana, the receipt of which has been already acknowledged.

We are happy to find that we shall not differ as to the material facts on which the question depends—to wit: that France held Louisiana prior to the treaty of 1763, to an extent eastwardly to the Perdido, comprising in it the greater part of West Florida; that she ceded it by that treaty to Great Britain, who, in 1783, ceded it to Spain—Spain having possessed herself of it by her arms in the course of the war; that the treaties referred to in that of St. Ildefonso, whereby Spain ceded Louisiana to France, as having passed subsequently between Spain and the other Powers, are that of 1783 between Great Britain and France, whereby the former ceded to the latter that portion of Louisiana called by her West Florida, and that between the United States and Spain in 1795. None others were made by Spain relative to that object; therefore they only could be referred to. We admit also that they were referred to by a real and sufficient motive.

We are also happy to find that we shall not differ in opinion on the principles of the law of nations, or the rules by which treaties are to be construed under them, especially the following—to wit: that treaties must not have an odious or absurd construction, when it is possible to give them a plain and simple one; that the intention of the party to a treaty is to be collected from the whole article; that each clause is to be taken into view, and the import of the whole collected from that of each clause; and that no part is to be supposed superfluous to which a rational meaning can be given.

We should be happy if we could agree in the application of these facts and principles to the point in question. We draw however from them, by the clearest evidence and most satisfactory reasoning, a conclusion that under the treaty between the United States and France of 1803, which is founded on that of St. Ildefonso, between Spain and France in —, West Florida was comprised in the cession of Louisiana to the United States. Your Excellency, it appears, is of a contrary opinion.

Before we proceed to the inquiry, and to answer your Excellency's note, we think proper to premise that it would have been more agreeable to the United States to have obtained the cession of that province of France, by a short definition of

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its boundaries; since, in that case, they would have known distinctly what they had acquired, and avoided the necessity of a discussion with Spain. But as these had not been traced between France and Spain, it was impossible to give such a definition. It was therefore agreed that France should cede to the United States precisely what she had acquired of Spain; and, that the extent of that cession might be known, that the third article of the Treaty of St. Ildefonso, between France and Spain, should be inserted in that of Paris between the United States and France. Thus, that article, and it alone, became the extent of the right which the United States had thus acquired. There is nothing in the treaty, nor did anything occur in the negotiation, to detract from its just and rational import. The United States were at liberty, as France would have been, had the cession not been made, to examine, under it, the extent of their rights, and, in so doing, to appeal to those facts and principles, which, in the estimation of the enlightened and impartial world, ought to govern in the case. It is by this investigation that the Government of the United States has formed its opinion of their rights; and it is from a regard to justice, and motives of respect to His Catholic Majesty, that they are now made the subject of amicable discussion with his Government. Having made these remarks, we proceed in the proposed inquiry.

We observe that your Excellency relies much in support of the pretensions of Spain, in the point in question, on the import of the term "retrocede," which is found in the treaty; that you consider it as going far to decide the question in her favor. We cannot but express our surprise that such reliance, or indeed that any, should be put on a term, vague and equivocal, at best, which, it is easy to show, neither has, nor was intended to have, any influence in the question. If it were of any importance to analyze that term, it might be contended, that, as France once possessed that province, a cession of it back to her, by any Power who had obtained it of a third, was a retrocession of it. By ceding it back to France, the former proprietor, it would, in respect to her, be a retrocession, although not one acre of it had been received of her by the Power making it; and it is very likely, under such circumstances, that such would have been the title of the treaty, or the phraseology of the article applicable to the subject. In the present case, all the territory which was ceded back to France had belonged to her before. Nineteen-twentieths of it, supposing West Florida to be a part, had been previously ceded by her to Spain, and that twentieth part had been ceded by her to another Power, to accommodate Spain, of whom Spain had obtained it. Was it not natural, then, when Spain ceded back this territory to France, that the term retrocession should be made use of? Had it been the object and studious endeavor of the parties to characterize in the treaty the former propositions and transaction respecting the territory, and no more could have been intended, it is not known how, even with the import annexed to the term by your Excellency, a more

suitable or just one could have been adopted for the purpose. But, as already observed, this term is of no real importance in the case, nor was it intended to have any by the parties, in the sense alluded to, as is perfectly evident by the other parts of the article. We find in it three distinct members or clauses, which were introduced for the express purpose of explaining what was intended to be done. By these, is fully and accurately defined what proportion of that province should be transferred to France, and what other proportion of it should be exempted from the operation of the treaty. If it had been intended that the term "retrocede" should be understood in the sense insisted on by your Excellency, it is presumable that none others would have been used, since, not being necessary to illustrate, they could only serve to obscure and perplex. The introduction, there, of other clauses, plainly proves that that term was not to be relied on as expounding the object of the parties, but that those clauses were to do it. It will not be denied, that, although the title of the treaty might be what it is said to be, under the term, "retrocede," introduced in every page, and although Spain had never received one acre of the territory from France, she might, nevertheless, by suitable operative clauses, convey and transfer to France all that portion of Louisiana which she possessed, if she was so disposed. It is by the operative clauses of every article in each, that their meaning is expounded. It is to them that we must respectively refer, in the present instance, for the intention of the parties in that of St. Ildefonso, and the extent of the rights of the United States acquired under it.

By the first clause of the third article of the Treaty of St. Ildefonso, Spain cedes to France the Province of Louisiana—"such as it is in the hands of Spain." It is to be observed, that the reference here made to that Province was in its integral state—that is, while in the possession of France—and of course prior to the cession made of it by her in 1763, as will be more fully seen by the next clause. The simple question then on this clause is, What portion of Louisiana was in the hands of Spain when the Treaty of St. Ildefonso was formed? All that portion, be it what it might, was clearly and positively comprised in the cession, and transferred to France; all that portion, be it what it might, not in the hands of Spain, was as clearly and positively excluded from it. This is the plain and obvious import of the clause—indeed it admits of none other—by adhering to which, everything of an absurd and odious tendency is avoided, simplicity in the construction is preserved, and (what is of equal importance) the integrity and fair intentions of the parties are manifested. All that portion of Louisiana, according to its ancient limits, which lies eastward of the Mississippi, from the 31st degree of north latitude to the northern limits of the United States, had been ceded by the treaty of 1763 to Great Britain, to which France, Spain, and Portugal, were parties, and afterwards confirmed by her to those States at the close of the war of their revolution in 1783, to which France by her treaty with those

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States in 1778 had already renewed her special sanction, as did Spain afterwards by her treaty in 1795, with the addition of the right of deposit at New Orleans. It would therefore have been highly improper in the parties to the Treaty of St. Ildefonso to have formed it in such manner as to have admitted the cession to have applied by any possible construction to any part of the territory or rights belonging to it. Accordingly we find, by the clear and obvious import of the article, that such a construction is altogether and absolutely precluded, and by terms the most suitable and judicious that could have been selected. We find, also, that the article is equally clear and explicit as to the position of the Province which it was intended to cede. By ceding that portion, and that only, which was in her hands, Spain did what she had a right to do, and no more, of which a very distinct idea was conveyed in both respects. She excepted from the cession all the territory above described, which of right ought to have been excepted. She comprised in it all that she had a right to cede, including of course (as being her property, and in her hands) West Florida.

In the second clause the cession is further explained and confirmed in the following terms: "Such as it was when France possessed it," by which a clear and explicit reference is made to the Province, at a period preceding the treaty of 1763, when France possessed the whole. This clause would of course have been understood to have comprised the whole, had no part been specially excepted from the cession. But we have already seen that by the operation of the first clause all that portion of the Province, according to its ancient limits as known before the treaty of 1763, now belonging to the United States, was clearly excepted from it. In every other respect, however, its operation is uncontrolled. It certainly comprises all that part which was then in the possession of Spain, from whatever Power or by whatever means obtained. By referring to it at an epoch anterior to the treaty of 1763—that is, when France possessed it—it was obviously the intention of the parties to reject all idea of subsequent divisions, modifications, or applications, by either of the Powers who were since possessed of it. It was well known that Great Britain had called that portion which was ceded to her by the treaty of 1763, West Florida; and it was probable that Spain might have called some other portion of it adjoining Mexico by some other name. Hence it was possible, if by any construction an allusion to the Province had been admitted at any period after 1763, that these distinctions and terms might have created some embarrassment in the meaning. To avoid that danger, it was deemed advisable to go back to an anterior epoch, and thereby put them entirely out of the question. This clause, then, shows still more clearly that it was the intention of the parties to include West Florida in the cession, since, by taking them together, and giving to each and both their just construction, it is impossible to mistake their meaning. By the first, all that portion of Louisiana which was in the hands of Spain was transferred

to France; but as it was possible, for reasons just mentioned, that doubts might arise whether West Florida was comprised in the cession, by this it is expressly declared that no part of the Province in the hands of Spain, which France had ever possessed, should be exempted from it.

By the third clause of the article, the cession of the province is declared to be in an extent "such as it ought to be after the treaties passed, subsequently, between Spain and other Powers." The treaties referred to here are, that between Great Britain and Spain, in 1783, whereby West Florida was ceded to the latter; and that between Spain and the United States, in 1795, whereby the boundary adopted in their treaty with Great Britain, with the right to the free navigation of the Mississippi, and of deposit at New Orleans, were established. What, then, is the effect of this third clause? To us, nothing can be more simple or intelligible. We will first examine it in reference to the first treaty, which alone creates the difficulty. By that, Spain became possessed of a portion of the province of Louisiana, which she had not acquired of France; by means whereof, such addition is brought within the scope of the two first clauses, already noticed, and is transferred by them to France. It is brought within the scope of the first, because "it is in the hands of Spain." It is brought within the scope of the second, because it is a part of the province, "such as it was when France possessed it;" and, by the terms of this last or third clause, it is expressly designated as a portion of the territory which it was intended to cede, by that treaty, to France. If we examine impartially the import of these terms, we shall find that it is impossible to give them any other rational interpretation in reference to this object. The terms are, "such as it ought to be after the treaties passed, subsequently, between Spain and other Powers." This portion having been a part of the province when France possessed it, and being now, by the Treaty of 1783, vested in the hands of the same Power, who held every other part, not expressly exempted from it as belonging to and secured to the United States, by many treaties, as already stated, ought to be considered as a part of it again. Had Spain possessed and ceded that portion of Louisiana to Great Britain by the Treaty of 1783, or at any time before that of St. Ildefonso, this clause would have exempted it from the cession, as would both the others. Being out of the possession of Spain, those clauses could not have operated on it; and, being ceded by Spain to another Power, in a treaty passed subsequently, that is, after 1763, the cession would have been sanctioned by this clause. But Spain did not cede that territory to Great Britain; on the contrary, she acquired it of her; and it is inconceivable to us, how that acquisition, which brought it into her possession, and subjected it to the control of the two first clauses, should be supposed to have exempted it from such control; how a treaty which enlarged the limits of the province in her hands, without producing any other effect, should be construed as lessening the extent of the cession. The reference made by

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this clause to the Treaty of 1783, must be considered as intended to produce an effect in the present one, correspondent with the spirit of that of 1783. It would be strange, indeed, if it counteracted that spirit, and produced an opposite effect. And in judging of the effect which it was thus intended to produce, not only the spirit of that treaty is to be regarded, but this clause must be construed in connexion with the preceding ones, so as to give them their just effect also. It is a well known rule in the construction of treaties, that "the interpretation ought to be made in such a manner that all the parts appear consonant with each other; that what follows agrees with what went before, at least, if it does not manifestly appear that, by the last clause, something was changed that went before." If we apply this rule to the present case, the conclusion is unavoidable, since, by the construction we contend for, all the clauses have their just import, are consonant to each other, unite in the same object, and produce the same effect; which is to show that it was the intention of the parties to comprise West Florida in the cession.

With respect to the effect of this clause on the other treaty referred to in it, to wit, that of 1795, between the United States and Spain, it is obvious that it was the intention of the parties to secure to those States, in the hands of the new proprietor, the rights which they had acquired on that territory by that treaty. It was, it is true, impossible for those parties, or any others, in any treaty between them, to destroy the rights of a third one. It was, nevertheless, very proper and honorable in them to insert a provision in this, for the security of those rights. Having thus examined carefully and impartially the third article of the Treaty of St. Ildefonso, under which France ceded to the United States the province of Louisiana, and, as we presume, proved incontestably, by a just construction of the several clauses, that West Florida was a part of the cession, we will now proceed to notice some of the other remarks of your Excellency which merit a more particular attention.

Your Excellency observes that, as the territory in question, to wit: that lying between the river Iberville and the Perdido, was called by Great Britain West Florida, after it was ceded to her by the treaty of 1763, and as that name had been preserved to it by His Catholic Majesty in the title to his Governor at the Havana, since it came into the hands of Spain, it cannot be considered as comprised in the cession to France by the Treaty of St. Ildefonso. But we have already shown, and we presume satisfactorily, that that objection is altogether unfounded, supposing the fact as thus stated to be correct in both cases; though it is proper to observe, that we had understood that the territory in question had been governed as a part of Louisiana after the treaty of 1783. Be that, however, as it may, it is proved, by referring to Louisiana at a period when it was possessed by France to characterize the cession made, that it was an essential object of the two first clauses to get rid of that objection, and that they

have done so as effectually as if that division or name had never existed. It was also observed, that any construction of those clauses which should comprise West Florida within the cession, might, with equal propriety, be considered as applicable to all that portion of Louisiana which lies within the limits of the United States. We cannot perceive on what principle this remark is founded, since, as the facts are different, there is certainly no analogy in the cases. To support the doctrine, it ought to be shown, that West Florida is not in the possession of Spain, but of the United States or some other Power. We have shown, by a fair construction of the clauses, that it is by virtue of that portion of the province being in the possession of Spain, that it was comprised in the cession; and by virtue of the other portion of it that is, what belongs to the United States, being out of the possession of Spain, that it was excluded from it.

Your Excellency observes, also, that if it had been the intention of the parties to include West Florida in the cession, it would have been easy to have expressed it. We do not know that it would have been possible to have expressed it in a more clear manner than is done; we are satisfied that other terms more comprehensive, and guarded in reference to all the objects which it was proper the parties should have in view, more intelligible, less free from objection, and, at the same time, so concise, could not have been found. With strict propriety may we say, that if it had been the intention of the parties to exclude West Florida from the cession, it was very easy to have done it, and that the means were obvious, since it was only necessary to have stated that Spain retroceded to France that portion of Louisiana only which she had received from her. Had that been done, there would have been no occasion for the subsequent clauses, especially the two first, to explain the meaning of the parties, and define the extent of the cession. We might add that, if the case admitted of any doubt, which, however, we deny; for, in our judgments, there never was a clearer one taken into consideration, from the nature of the transaction, that doubt ought to operate against Spain, since it is a well-established doctrine of the law of nations, in the construction of treaties, that in all cases of cessions or grants, "if the party making them fails to explain himself clearly and plainly, it is the worse for him; he cannot be allowed to introduce subsequent restrictions which he has not expressed." We do not, however, think that the present case admits of any doubt.

We cannot suppose that the French prefect, M. Laussat, had any instructions from his Government by what limits he was to receive the Province of Louisiana from the officers of Spain, or that he had its orders to surrender it to the United States by any of a definite nature. The opinion is founded on the treaty between the United States and France, by which the cession was made to those States, and in which no limits were defined, for the reasons stated in the commencement of this note. We entertain, as already ob-

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served, a very high respect for His Imperial Majesty, and we can never believe that he would, by any act of his, be willing to invalidate any of the rights which the United States had acquired under that treaty.

With respect to the opinion entertained by Mr. Ellicott on this point, we have only to observe, that, although we believe him to be a good astronomer and geographer, we are far from considering him in the light of an able civilian. It is presumed that he ran the line between the United States and Spain correctly, in the case alluded to, and that his charts may also be correct; but we doubt if he ever read with attention either of the treaties on which the present question depends, or would be an able expounder of them if he had. In making his book, which it appears he had completed before he was acquainted with the cession of Louisiana to the United States, or with the nature of that made by Spain to France, which was then for the first time known, it was natural that he should consult the old maps of the country, and regard the divisions that were made of it prior to that epoch, especially in conformity to the treaty of 1763. Under such circumstances, and in consideration that this question depends on treaties, your Excellency will, we presume, see the evident impropriety of paying that deference to Mr. Ellicott's opinion which you have been disposed to allow it.

We have read, with much attention, your Excellency's note of the 4th, on the subject of French spoliations committed within the limits of Spain, and are sorry to find, that the opinions which we respectively entertain on it are as remote from an accord as they were in the commencement. We have read with equal attention your remarks on that of the suppression of the deposit at New Orleans, in which you do not seem to assent to the ideas which we deemed justly applicable, and thought it our duty to express, relative to that interesting and unexpected occurrence. Having said all that we have to observe on those points in our former notes, and having communicated fully our sentiments in this, as in that first presented, respecting the eastern limits of Louisiana, it remains that we should now proceed to the last topic depending between us, to wit: the western limits of that province. Having already had the honor to present our view of the rights of the United States on that point also, we shall be happy to be favored with that of your Excellency on the same.

We avail ourselves of this occasion to observe, that we received with much pleasure your Excellency's note of the 28th ultimo, in reply to our remarks on that of the 16th, the purport of which was further confirmed in that of the 4th, since it gives us the very satisfactory assurance that it was not your intention, by any expressions in that note, to convey the unfavorable sentiments in regard to our Government and country, which we had supposed it did. It was with much reluctance that we communicated to your Excellency the impression which that note made on

us, which we certainly should not have done had we not believed that it would have produced a similar one on our Government, on whom, we were persuaded, it was neither your wish nor intention to produce it. The frank and honorable explanation which you have given us in that respect, is a full confirmation of what we had anticipated on that head, and an ample assurance that, whatever may be the result of this business entrusted to us, we shall carry with us the sentiments of that high respect and consideration for your character which it justly merits.

We beg your Excellency to accept the assurance of our high consideration and respect.

CHARLES PINCKNEY,
JAMES MONROE.

His Excellency Don Pedro Cevallos to Messrs. Monroe and Pinckney.

ARANJUEZ, *March 14, 1805.*

GENTLEMEN: I have received your esteemed letter of the eighth, in which you are pleased to answer mine of the 24th ultimo, relative to the limits of Louisiana, and I cannot do less than immediately to reply to it.

I agree at once with your Excellencies, that treaties ought not to receive odious and absurd interpretations, which are capable of clear and simple ones, and that the intention of the parties ought to be collected from the whole context, and from each article: from these principles and mode of examination of the third article of the Treaty of St. Ildefonso, I deduce consequences from the same very different from those which your Excellencies have done.

Your Excellencies believe to be of very little importance to the decision of the present question the word "retrocede" or "retrocession," which is the title of the Treaty of St. Ildefonso, and is found in the said third article, and suppose it a term vague and equivocal, which has no influence on the question; and that, if it had been important to analyze it, it might be easily made to appear that with the expression "retrocede," it also intended to denote that West Florida, or a part of it, ought to return to France, although she had not ceded it to Spain. For my part, I cannot but be surprised that your Excellencies should consider vague and indeterminate an expression which serves to denominate the treaty, whose title literally copied is as follows: "Traité préliminaire et secret entre, la république Française et Sa Majesté Catholique, touchant l'agrandissement de Son Altesse Royale le Duc de Parme, en Italie, et la rétrocession de la Louisiane," and which governs the whole proceeding, and is conspicuous in all the clauses of the third article of the said treaty. On a single reading of this article, there is no one but must know that, according to grammatical order and the common use of language and words, the words "to engage to retrocede" is the principal action of it, and this principal intention is conspicuous through all the context and clauses of the article; and that, although the following expressions may modify it, they can in no degree contradict

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it without giving to the whole an absurd meaning, and as repugnant to common sense as to the most simple rules of grammar and art of writing; nor can it be said without discredit to the contracting parties, that they should avail themselves of an expression vague and equivocal, and use it exactly in the most important article, and upon one of the most interesting objects of the treaty; and that, with a view to find such vague expressions, they should select the word "retrocede," having at hand the word "cede," which, followed by other explicit clauses that might have been inserted, would have explained with facility and precision the return of Louisiana to its former owner, and the cession of West Florida, if such had been the intention. But it was no doubt the intention of the parties that the expression "retrocede," which has given the name to the treaty, and serves to express the principal design of the third article, should be marked with all the exactness and grammatical rigor possible; nor is it susceptible of doubt that the expression "retrocede," in its obvious and grammatical sense, means to cede to one what it has received from it. Your Excellencies ought not, therefore, to think it extraordinary that I have believed, and do believe, that this expression is of the greatest consequence to the decision of the present question.

The force it carries with it makes us see at once with what exactness and simplicity the other parts of the article quadrate with it. If we set out from the beginning to give to the expression "retrocede" a meaning which it has not, it will not be extraordinary if we find some embarrassment and difficulty to decipher the said article. It says, in the first place, that it retrocedes Louisiana "avec la même étendue qu'elle a entre les mains d'Espagne;" but this expression, in the mode in which your Excellencies contrive it, appears absurd and contradictory. It is indubitable that Spain possesses West Florida as Florida, not as Louisiana, and this act, founded on an authenticity the most notorious, is marked, in the Treaty of 1783 and 1795, in a manner which cannot be contradicted or admit of a doubt; consequently, Louisiana, "avec la même étendue" which it had in the hands of Spain, is without West Florida, and to suppose that the cession could have comprehended this province, it was impossible to suppose it could be Louisiana, with the same extent, without incurring a palpable contradiction. Your Excellencies know the force of this difficulty and wish to explain the first clause by the second, which says, "et qu'elle avoit lorsque la France la possédoit." But I ask, has the second clause a fixed epoch, which determines the time when France had it? Certainly not. Then the want of this fixed epoch alludes to the last time that France had it, that is, when she delivered it to Spain; an expression the more convenient, as in any other manner it will be contradictory with the first, which says, "avec la même étendue qu'elle a entre les mains d'Espagne;" if it was with more, it could not be with the same. It is more natural that a clause which has a fixed epoch, as the first has, should serve to clear up the sense of the second, which has no

epoch, or extent fixed, than that we should give so much force to the doubtful epoch of the second clause, as to make it destroy the clear and marked meaning of the expression "retrocede" in the first clause "avec la même étendue." Admitting the explanation of your Excellencies, the second clause is in contradiction with the first; admitting mine, both explain and combine simply, and prove that Spain delivered Louisiana to France, with the same extent that it had in her hands in 1800; and as France possessed it when she delivered it to Spain, but as neither in the one or other epoch West Florida made a part of Louisiana, the two clauses perfectly unite with each other, and both with the principal action "retrocede," which governs all the clauses of the article.

The third clause, which your Excellencies suppose can also be brought as a proof that West Florida is included in the retrocession of Louisiana made to France, is, to my understanding, a new proof of the contrary; it says: "et telle qu'elle dût être après les traités passés entre l'Espagne et d'autres Puissances." It is impossible to make anything clearer than that the treaty did not alter anything in the treaties which Spain had made with other Powers on this subject. There were two, one of 1795 with the United States, and one with England in 1783, by which Spain had acquired the territories to the eastward of the Mississippi, not as Louisiana, but as Florida, and, consequently, to be, as it ought to be, after this treaty, was with the exclusion of a territory possessed by England as West Florida, conquered by Spain as West Florida, and acquired irrevocably as West Florida by the treaty of 1783, and received, in each of these solemn acts, a new qualification of its total separation from Louisiana, and of the limits which separate them. Your Excellencies contend that the treaty of 1783 was a new incorporation of the said territory to Louisiana; but I do not see in the said treaty of 1783 anything but a confirmation of the right of conquest which His Majesty's arms had made of an English province called West Florida; the cession which France had made to England of the said territory had been an alienation, perfect, irrevocable, and perpetual. The territory became an English possession, and afterwards a Spanish one. That Spain, on the other side, and by other titles, should have acquired Louisiana, and that the two territories should return to be united in the one hand, in which they were before united, does not import, nor could it import, a legal incorporation of them, because their titles and times of acquisition were different. Spain had no Louisiana but what she received from France, and it was undoubtedly Florida she received from England.

It is not conceivable or imaginable how the cession of a province or territory could occur without mentioning or naming it, or that it could be made only by designating it with a name, which, by the consent and notice of all the nations concerned, and the most authentic public acts, it had lost many years ago. This territory was called West Florida, and it was so called au-

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thentically, and by this name the contracting parties would have called it, had they imagined it was comprehended in the cession; as it is an acknowledged principle that the territories they change or cede ought to be designated by the names they then officially have; nor can it be said that, by its entrance into the possession of Spain, it returned to its ancient state and name, because all the public acts since its entrance into the possession of Spain, from the treaty of 1783, inclusive, have confirmed its separation from Louisiana, and its difference of name springing from the difference of its title of acquisition; after a separation so qualified, it was only an express and positive stipulation that could reunite it to Louisiana in its retrocession. Your Excellencies have attempted in your note to persuade me that the treaty of 1783 reunited West Florida to Louisiana anew, attributing it to the motive which made France cede to England, in 1763, the territory to the east of the Mississippi, and this motive, your Excellencies say, was to favor Spain. But, on my part, I cannot agree to this. France ceded this territory because she felt it her interest to do so, or was obliged to do so; but this is of no importance, for, be the motive what it may, the cession cannot be considered less than an effectual, irrevocable, and perpetual alienation, with all the consequences which were to make West Florida an English possession. Being so, Spain could conquer, acquire, and receive it from England, having this original and just title to it; and this alone is all she requires to make it her property in every sense of the word, and as independent of Louisiana as it was in the hands of England.

It results from this, that the contracting parties had no intention to include West Florida in the treaty of St. Ildefonso; this is the more confirmed, if we recollect that France could not do it, nor could she stipulate for the acquisition of any territory to the eastward of the Mississippi, without the consent of the United States, as she had obliged herself to this by an express stipulation contained in the sixth article of her treaty with the United States; which article says: "*Le Roi très Chrétien renonce à posséder jamais les Bermudes, ni aucune des parties du continent de l'Amérique Septentrionale, qui, avant le traité, de Paris de 1763, ou en vertu de ce traité, ont été, reconnues appartenir à la couronne de la Grand Bretagne.*" It is to be seen from this, that France could not (if the United States did not consent, when she had bound herself by this treaty) acquire West Florida, which, by the treaty of 1763, belonged to the Crown of Great Britain. If in the treaty of St. Ildefonso, France had intended or proposed to acquire West Florida, it is clear she could not do so without the consent of the United States, and that this consent ought to precede all other stipulations; on the contrary, if France should have infringed the rights of the United States, which can in no manner be supposed, it would not be decorous in the United States to give to the treaty of St. Ildefonso an interpretation, from which it must result, as a

necessary consequence, that France had violated their treaty with the United States, and that they founded their right to West Florida on this violation.

The opinion of the astronomer and geographer Ellicot, which is so exactly conformable to the ideas I have just stated, and whose concluding expressions I transmitted you in my letter of the 24th, is of very great weight and consideration on this subject. I do not suppose it, as your Excellencies do, a question for a lawyer or civilian; it is, in its whole extent, entirely geographical; it only treats of the question, whether the territory to the east of the Mississippi, at the time of the retrocession, was Louisiana or West Florida. What person more proper to give an opinion on this subject than the one who has merited to be employed by the United States, in fixing the limits of the very territory he treats about? It is dishonoring his talents to say that he had not with him the maps, both ancient and modern, of the said territory, and the most authentic documents respecting it; and using, as he does, the expressions I copied for your Excellencies in my letter of the 24th ultimo, after he knew of the acquisition of Louisiana by the United States, leaves no doubt that his love of truth and justice forced from him this sincere confession of the incontestable right of Spain to the territory of West Florida.

But all further reflections are unnecessary upon this subject, when it is considered that the Treaty of St. Ildefonso was a contract between France and Spain, and that, of consequence, on whatever point of it (however it might appear doubtful) on which France and Spain are agreed in their understanding and explanation of it, this uniformity of understanding has as much force as the most explicit and determinate stipulation, because no one can know as well as the contracting parties what the one was to cede, and the other to receive. The United States, who have succeeded to the right of France, can have no other right or claim than that which France supposed she had. France has been, and is now, persuaded that, by the treaty of retrocession, she neither did nor had any intention to acquire West Florida. The prefect Laussat, charged to carry the treaty into effect, instructed perfectly in its contents, and being depositary of the intention of his Government, was satisfied of the manner in which it was carried into execution, without being put into possession of West Florida; which act leaves no doubt of the manner in which France understood the Treaty of St. Ildefonso should be executed. But if your Excellencies should still consider this as insufficient proof, will you permit me to send you a copy of a declaration the most positive which can be imagined, in which the Government of France declares that it never thought of acquiring territory to the eastward of the Mississippi by the Treaty of St. Ildefonso, much less has ceded it, or could cede it to the United States. The Minister of Foreign Relations of France has written upon this subject, on the 30th August last, to His Majesty's Ambassador in Paris, and

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in his letter are the following remarkable expressions: "Les limites orientales de la Louisiane sont indiquées par le cours du Mississippi, et ensuite par la rivière d'Iberville, le lac Pontchartrain, et le las Maurepas. C'est à cette ligne de démarcation que se termina le territoire cédé par l'Espagne à la France, en vertu traité de 30 Ventose, an 9. La France n'auroit rien demandé à l'Espagne au delà de cette limite; et comme elle n'a fait que substituer les Etats Unis aux droits qu'elle avoit acquis, ils ne peuvent pas exiger de l'Espagne une cession de territoire plus étendue, à moins que cette concession ne soit négociée et stipulée entre eux et l'Espagne par quelque convention ultérieure."

These expressions are so determinate and clear, as not to permit me to make any further reflections on them, persuaded that the simply reading them is sufficient for the conviction, that, as Spain did not think of ceding, nor France of acquiring, West Florida by the Treaty of St. Ildefonso, it is clear that the United States, who have succeeded to the right of France, could not acquire that which she supposed did not belong to her, and which she has declared she did not acquire, nor think of acquiring. This point appears to me so little susceptible of doubt after what I have said, and had the honor to say to your Excellencies in my note of the 24th ult., to whose contents I again refer you, that I am confident the justice and well established good faith of the United States will acknowledge that they cannot found any right to West Florida from the Treaty of St. Ildefonso.

In concluding this letter, I cannot but declare my satisfaction to your Excellencies, that I see, by yours of the 8th, you are persuaded of my unalterable sentiments of respect and consideration for the United States, and also of my constant esteem for and wish to please your Excellencies, which I now have the honor again to renew; praying God to guard your lives many years.

PEDRO CEVALLOS.

Messrs. Pinckney and Monroe to His Excellency Don Pedro Cevallos.

ARANJUEZ, *March 16, 1805.*

SIR: We had the honor to receive yesterday your esteemed note of the 14th, and are sorry to find that we still continue so distant in our opinions upon the subject of it.

In our last, we gave your Excellency so fully the view which our Government entertains of the right of the United States to West Florida, and are still so firmly persuaded of their undoubted right to the same, that we think it unnecessary to remark further on that point.

All the questions in controversy between us having been discussed at length, and having been favored with your Excellency's opinion on each of them, except the western limits of Louisiana, we now take the liberty to request you to furnish us with the same, in answer to our communication on that subject.

We beg your Excellency to accept the assurance of our profound consideration and respect.

CHARLES PINCKNEY.
JAMES MONROE.

Messrs. Pinckney and Monroe to Mr. Cevallos.

ARANJUEZ, *March 30, 1805.*

The undersigned, Ministers Plenipotentiary and Envoys Extraordinary of the United States of America, have the honor to inform His Excellency Don Pedro Cevallos, that the length of time since their last note to his Excellency, to which no answer has been given, induces them to suspect that his silence is intended as an intimation of his desire that the negotiation should cease. They are sorry to add that the spirit with which the friendly advances and overtures of their Government have been received, would leave no doubt in their minds on this point, if his Excellency had not given them reason to expect, by his note of the 4th instant, some propositions, on his part, for the fair and equitable adjustment of the differences subsisting between their Governments. Having completely fulfilled the orders of the President, in proving, by their communications, and by the time they have attended his Excellency's propositions, the justice and moderation of his views, as of his friendly disposition and high respect for His Catholic Majesty, it remains that they should not be unmindful of what they owe to the Government and country, which they have the honor to represent. It neither comports with the object of the present mission, nor its duties, to continue the negotiation longer than it furnishes a well founded expectation that the just and friendly policy which produced it, on the part of the United States, is cherished with the same views by His Catholic Majesty. Under such circumstances, the undersigned consider it their duty to request of his Excellency information whether it is his desire to terminate the negotiation on the point it now rests. In case it is, they think proper, in expressing their regret at the result, to add, that they shall not hesitate promptly to comply with it. But if it is still his Excellency's desire to continue the negotiation, they have to request that he will be so obliging as to give them the sentiments of His Majesty's Government respecting the western limits of Louisiana, and that he will also accompany it with such propositions as he may think proper to make for the adjustment of the very important and interesting concerns between the two nations.

The undersigned have the honor to offer to &c.

CHARLES PINCKNEY.
JAMES MONROE.

Mr. Cevallos to Messrs. Pinckney and Monroe.

ARANJUEZ, *March 31, 1805.*

GENTLEMEN: I have received your esteemed favor of yesterday, in which you were pleased to inform me that the delay of my answer to your favor of the 15th has made you suppose it was, perhaps, the disposition of this Government to put

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an end to the negotiation in its present state. In answer, it is my duty to inform your Excellencies that it has always been the disposition of this Government to continue, until concluded, a negotiation which has for its object a termination of the discussions that exist between the two countries; examining, first, each controverted point, and endeavoring to fix, as far as possible, the rights of each country; to begin, afterwards, the negotiations that may be convenient to both; that, with this view, and according to this plan, we have examined and discussed the greatest part of the said points. There is now remaining to treat only respecting the western limits of Louisiana, on which point I promised to transmit to your Excellencies the opinion of this Government with the greatest possible despatch, as I have already assured you; being very sorry that my many indispensable avocations, and the attention which a subject of this nature requires, have not yet permitted me to execute it, and that your Excellencies should have interpreted my silence since as a wish to put an end unreasonably to the negotiation.

With demonstrations of my sincere respects, I renew to your Excellencies, &c.

PEDRO CEVALLOS.

Mr. Monroe to His Excellency Don Pedro Cevallos.

ARANJUEZ, April 3, 1805.

Mr. Monroe presents his compliments to His Excellency Don Pedro Cevallos, and requests that he will appoint some day and hour convenient to his Excellency, when he shall have the honor of a conference.

Mr. Monroe repeats to his Excellency the assurance of his high consideration and esteem.

Messrs. Monroe and Pinckney to Mr. Cevallos.

ARANJUEZ, April 9, 1805.

The undersigned, Ministers Plenipotentiary and Envoys Extraordinary of the United States of America, have the honor to inform his Excellency Don Pedro Cevallos that they consider his omission to answer their notes relative to the western limits of Louisiana, for so long a term, with his refusal to accept their propositions of the 28th January, or to propose any others in their stead, for the amicable adjustment of the differences between the United States and Spain, as having evinced the sentiments of His Majesty's Government on that interesting subject, in terms too strong to be misunderstood. By refusing to answer propositions until a discussion was ended, in the mode which his Excellency thought proper to pursue, and declining to bring it to an end, even in that mode, within the term which naturally belonged to it, the indisposition of his Government to such an adjustment is as strongly declared as if it was announced to them in form. They think proper to add, that, by exacting of them in the commencement a discussion in that very dilatory mode, they had even then anticipated unfavorably of the result. To their propositions, which embraced every object in a frank

and explicit manner, they had expected a correspondent answer. In discharge, however, of this great trust confided to them by their Government, they were resolved to keep in mind, and to fulfil, in the best manner they could, all its duties, among which they considered it an important one not to fail in any circumstance of respect which was due to His Majesty or his Ministry. On that principle they entered into the discussion in the manner proposed by his Excellency, although it was contrary to their inclination, to their judgment of what was proper in such a case, and to what was agreed between them in their first interview. They did so, in the presumption that the discussion would be of but short duration; that it would not consume more than a few weeks before they reached its object; and that a conclusion of the negotiation afterwards, in one mode or other, would require a still shorter time. They well knew that the subject had been long before His Majesty's Government; that every part had been acted on by it, and was, of course, well understood; they were aware, also, that the extraordinary mission, which the President had appointed to His Catholic Majesty, had been announced to him, and been sometime expected by his Ministry. Under these circumstances, the undersigned could not doubt that His Majesty's Government would be prepared to meet that mission on every point, and to terminate it with the utmost promptitude. What, however, has been the result, and how has their accommodating spirit been required? If the first indications were unfavorable, they have been fully confirmed since. The United States will be astonished to learn in what manner the friendly advances and liberal overtures of their Government have been received; that, after exacting from their Ministers a form of discussion which tended unavoidably to delay, His Majesty's Ministers had ceased at length to discuss at all.

The undersigned have thought proper to communicate to his Excellency their sentiments of what has passed with that frankness which the nature of the subject requires, and which is due to the Government and country they have the honor to represent. In conformity with those sentiments of the conduct of His Majesty's Government towards the United States, at a period which, under existing circumstances, is made signal by the proof which the President has furnished of his strong desire to preserve the relations of friendship between the United States and Spain, it might be expected that, considering the negotiation as thereby terminated, as in truth it essentially is, they would take the step which is incident to that state of things, and that Mr. Monroe, retiring from Spain, would repair to his station at London. It is, perhaps, their duty to take that step at this time. They are, however, willing to make one further effort to accomplish the objects of the mission, and to add a new and solemn proof to those which already exist, that its failure, should such be the case, shall in no respect be attributable to their Government or themselves.

With this view, whose just and friendly charac-

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ter will, they presume, be duly appreciated, the undersigned have the honor to inform his Excellency that they shall still remain in Aranjuez a reasonable time, to receive from him such propositions, on the part of His Catholic Majesty, for the amicable adjustment of all subsisting differences, and other objects of interest depending between the United States and Spain, as he may think proper to propose. With such propositions, should any be made, they will be happy to receive any illustration of them, which his Excellency may be disposed to give. But it is proper to add, that they consider it incompatible with their duty to proceed in the discussion of the subject, or any part of it, until those propositions, which are again invited, are presented to them; that they cannot view his continuing to withhold them in any other light than as an explicit declaration that the further pursuit of the object of their mission is unacceptable to His Majesty. It may, indeed, be thought that, after having possessed his Excellency with the propositions of their Government, they compromised its character, by proceeding in the discussion in any mode, before they received his in return. To that proceeding they were prompted by a spirit of conciliation, which may justify it to a certain stage. Should they, however, persist in it after what has passed, they would forfeit all claim to that apology.

In inviting again propositions of His Majesty for the amicable adjustment of the points depending between the two nations, the undersigned have the honor to repeat to his Excellency the assurance that they will receive them with the high consideration which is justly due to them. The sentiments of the Government of France have been communicated on two points, which grow out of the treaties between the United States and that Power. The sentiments of one party to a treaty, as is well known, cannot affect the rights of the other, in points which arise between the parties themselves, much less in those which have reference to a third Power unconnected with it; nor ought they to influence its judgment, if the other party is an independent Power, as the United States are. This principle, which is inviolable, is more especially sound in the cases referred to, for the reasons which have been heretofore given. The sentiments, however, of His Majesty the Emperor of France, on those or any other points in which the United States are interested, especially such as grow out of their treaties, are entitled to much consideration on their part. The undersigned have not failed to bestow it on those, which have been communicated to them by his Excellency, as has been shown by their replies; they shall also be ready to show it in the treaty which they are desirous of forming with His Catholic Majesty, so far as a due regard to the rights of the United States and their indispensable duty will permit. The propositions which the undersigned had the honor to present to his Excellency on the 28th January last, which embrace the whole subject, are, in their judgment, founded, in every particular, in the strictest principles of justice; they are such as the President

ordered them to propose; they are such as he expects that His Catholic Majesty, from his known regard to justice, will not hesitate to adopt. They think proper, however, to add, that, in receiving the propositions which His Majesty may make for the amicable adjustment of those important concerns between the two countries, should any be made, and a difference in opinion appear on any point, they are disposed to do everything to conciliate an agreement which their instructions will permit. It is the sincere desire of their Government to adjust amicably, at this time, with His Catholic Majesty, all these high concerns, in a firm belief that the interest of both countries would be essentially promoted by that result. To accomplish it, the undersigned will omit nothing on their part which it is in their power to do.

The undersigned have the honor to inform his Excellency that they expect an early answer to this communication, and that by it will their future conduct be governed. They consider the negotiation as essentially terminated by what has already occurred; and, if they pursue it, it will be only on the proof of such a disposition on the part of His Majesty's Government as shall convince them, that there is just cause to conclude that it will terminate to the satisfaction of the United States. Having acquitted themselves, in every particular, to what was due to the just, the pacific and friendly policy of their Government, it remains that they should not be unmindful of what they owe to its honor, its character, and its rights. If His Majesty is disposed to adjust these important concerns, by an amicable arrangement between the two nations, on fair and equal terms, it may be easily and speedily done. Each party knows its rights, its interests, and how much it ought to concede, in a spirit of conciliation, to accomplish the objects of the negotiation. The undersigned feel the force of that sentiment, and will not fail to respect it. Should His Majesty's Government, however, think proper to invite another issue, on it will the responsibility rest for the consequences. The United States are not unprepared for or unequal to any crisis which may occur. The energy which they have shown on former occasions, and the firmness of their past career, must prove that, in submitting with unexampled patience to the injuries of which they complain, and cherishing with sincerity the relations of friendship with His Catholic Majesty, no unmanly or unworthy motive has influenced their conduct.

The undersigned request, &c.

CHARLES PINCKNEY,
JAMES MONROE.

Mr. Cevallos to Messrs. Monroe and Pinckney.

ARANJUEZ, April 9, 1805.

GENTLEMEN: In my letters of the 21st February and 14th March, I had the honor to explain to your Excellencies the incontrovertible reasons on which His Majesty founded his right to West Florida. I showed to your Excellencies, among other things, that the United States could not pre-

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tend to more right, nor to more extent of territory, than France had acquired by the Treaty of St. Ildefonso; and that, confessing as France confessed, that she had not acquired, or thought of acquiring by the said treaty, territory eastward of the Iberville, neither could she transmit to the United States any right over it.

Besides what I have said in the said notes, I consider it as indispensable to hand to your Excellencies the adjoined copy of a note which the Minister of Exterior Relations has addressed to the *Chargé des Affaires* of His Majesty at Paris, under date of the 26th ultimo, showing, in the most positive terms, that France neither acquired any territory to the east of the river Iberville, nor transmitted any to the United States; which declaration ought, in my opinion, to remove the most remote idea of doubt upon the subject, as very pointedly observes the Minister of Foreign Relations of France, "*faire connoître les droits que la France avoit acquis, c'est indiquer l'étendue et les limites de ceux qu'elle a transmis au Gouvernement Federal.*"

It not being possible, in my opinion, to contradict the evidence of this proof in favor of the rights of His Majesty over West Florida, it will be conformable to the good faith of both Governments, and contribute very much to facilitate the course of the present negotiation, that it should be considered as established between us, and as indubitable that the United States have not acquired any right to West Florida. Being about to enter immediately into the examination of the western limits of Louisiana, it cannot do less than embarrass the course of discussion to leave behind and still depending a point which has been proved to demonstration. The acknowledgment of the right of His Majesty over West Florida, by the American Government, which is not more than an act of rigorous justice on their part, will facilitate and simplify very much the course of a negotiation, which has for its foundation the good faith of both Governments, and their wish to terminate their differences.

I renew to your Excellencies the testimony of my distinguished consideration, &c.

PEDRO CEVALLOS.

P. S. After writing and signing this, I received the esteemed letter of your Excellencies of yesterday, to which I will answer as soon as possible.

P. C.

M. Talleyrand to M. le Chevalier de Santivanes.

PARIS, 5th *Germinai*, year 13.

SIR: I have received the letter which you did me the honor to address to me on the fourteenth of March, which particularly relates to the limits of Louisiana on the side of West Florida.

This question cannot become the object of a serious discussion between Spain and the United States, if a view is taken of the clauses of the treaties of cession which have successively transferred Louisiana to France and to the Americans.

Spain retroceded to France the territory only which she had received from her. The rights of

France have since been passed to the United States, and it was only with the same extent that she had acquired them.

This principle has been constantly pursued by His Imperial Majesty equally toward the Court of Spain and the Federal Government. His Majesty having no pretensions but to the territory situated to the west of the Mississippi and of the river Iberville, he had not authorized his Commissary at New Orleans to take possession of any other Province, and he did not cede any other to the United States.

His Imperial Majesty has repeatedly authorized me to make the declaration, and I have repeatedly addressed it in his name to the Ministers Plenipotentiary to the United States accredited near him by the Federal Government. His Majesty persuades himself that this frank exposition of facts ought to be sufficient to prevent any difference between Spain and the United States relative to the demarcation between the United States and the Floridas. To make known the rights which France had acquired, is to indicate the extent and the limits of those she transmitted to the Federal Government.

Accept, sir, the assurances, &c.

CH. MAU. TALLEYRAND.

Messrs. Monroe and Pinckney to Mr. Cevallos.

ARANJUEZ, April 12, 1805.

SIR: We have the honor to acknowledge the receipt of your Excellency's note of the 9th, with an extract of one from the Minister of Foreign Relations of France to the *Chargé des Affaires* of Spain, relative to the eastern limits of Louisiana.

Having had the honor to inform your Excellency, in our note of the 9th, that we considered the negotiation as essentially terminated by the disposition which His Majesty had shown, and the part it had acted in it, and that we deemed it incompatible with our duty to proceed in the discussion of the subject, or any part thereof, until we were furnished with His Majesty's propositions for the adjustment of the whole business, we have only to refer, in reply to this communication of your Excellency, to what was stated in that note on the most solid reasons. As soon as your Excellency complies with that request, we shall endeavor, by all the means in our power, in the sentiments expressed in that note, to manifest the high respect of the United States for His Majesty the Emperor of France, and their disposition to conciliate, in the treaty they are desirous of forming with His Catholic Majesty, the mutual interest of both countries.

We repeat our desire to be furnished as soon as possible, with your Excellency's propositions, which have heretofore been so often requested in vain, for the adjustment of all the points that are depending between the two nations. If it is the disposition of His Majesty's Government to meet in this negotiation the friendly advances and overtures of the United States, there can be no motive for longer delay; but if the contrary continues to be shown, we shall hasten to withdraw from a

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situation, which, while it compromises the character of our Government, cannot be agreeable to ourselves.

We beg your Excellency to accept the assurance of our high consideration and esteem, &c.

CHARLES PINCKNEY,
JAMES MONROE.

Mr. Cevallos to Messrs. Pinckney and Monroe.

ARANJUEZ, April 13, 1805.

GENTLEMEN: Complying with my promise, I proceed to examine, in this letter, the opinions of my Government on the western limits of Louisiana; following the plan established from the beginning, proposed by your Excellencies, and adopted by me, to examine each of the points depending between us, and determining, as far as possible, our respective rights on each. But before I proceed on the question, I should be wanting in the respect I owe to my own Government, to those considerations to which my public character will not permit me to be inattentive, and also to that of which I believe I have not been underserving in my private one, if I did not state to your Excellencies my surprise at reading your esteemed letters of the 30th March, and 9th of the present month. It is only fifteen days since I had the honor to write to your Excellencies my last note relative to the eastern limits of Louisiana, to which your Excellencies did not find it convenient to answer, except in the general terms that we did not agree, and that we would pass to the other point of the western limits of Louisiana; and, on the 30th of March, notwithstanding my promise, and my word given, that I would treat the last depending point, as I had done the rest, your Excellencies supposed you ought to state to me, that my silence for those days had induced a belief in you that I intended it as an intimation of my wish to end the negotiation. On a view of a discussion, pursued with so much punctuality and activity on all the controverted points, it appears to me as more natural, not to say more just, that your Excellencies should have believed that the nature itself of the point I was about to treat on, or the indispensable occupations of my Ministry, might have occasioned the delay, than to suspect that I wished to put an end to the negotiation, thereby breaking my word which I had pledged. My delicacy not permitting me to suffer such a suspicion to remain in the breasts of your Excellencies, I stated, in my letter of the 31st ultimo, the sensibility which this had caused me; the motives which had prevented my writing more quickly upon the point of the western limits of Louisiana; and, lastly, I reiterated my promise to do so with all the despatch possible. Notwithstanding this your Excellencies have thought proper, in your note of the 9th, to insist upon what you call my omission, and say that the Ministry of His Majesty intend to cease the discussion entirely, with other assertions to the same effect, which cannot do less than make me feel very much, both as they respect my public and private character.

In answer to these, I shall confine myself to only stating to your Excellencies, that the nature of the point itself of which I am about to treat, has been the cause of the small delay which I have had the misfortune to have so unfavorably interpreted by your Excellencies.

The question upon the western limits of Louisiana is not a point which can be examined or discussed, upon viewing one or two documents, or other pieces of that kind which may be possessed at the first view. To treat this point with exactness, it is necessary to examine a collection of plans and documents and historical relations which include a space of more than one hundred and fifty years. These documents are not to be found in the department under my care; many of them belong to the Department of the Interior, besides those which are in the Vice Royalty of Mexico. It has been necessary to search and examine those which are here, and to give them a certain classification. It was my intention to form a memoir, which should comprehend all the most important topics, accompanying them with the necessary maps and plans, and handing them to your Excellencies, being anxious to make the opinions of my Government appear with all the exactness which the nature of the subject would permit; but the manner in which your Excellencies express yourselves in your said letters is a sufficient excuse to me to alter my plan, and reduce it to a few pages, that I may not still lengthen a delay which has given rise to such disagreeable suspicions.

The western limits of Louisiana never having been fixed in the exact manner which can be done in territories sufficiently peopled and of small extent, it ought necessarily, at the time of fixing them, to be the object of a negotiation, in which both parties should be agreed as to the principal basis, and by a commission of limits which should regulate themselves by that basis in fixing the demarcation. The principle which ought to serve as a rule for the establishment of the said basis, cannot be any other than the knowledge of the possession which each party had acquired in these territories, and the different establishments made, by each in the said places, by the Spaniards in the province of New Spain, and also those belonging to Louisiana, drawing a line which shall divide the one from the other side, and continuing it by the most natural points of demarcation possible.

It results from this principle, that the examination into the above-named limits is in a great degree historical, as it treats of the fixing the origin of many Spanish establishments, of the interior provinces, and of the French establishment of Louisiana.

If it had been proper to enter into a detailed examination at present, I would make a succinct historical detail of the Spanish establishments in the interior provinces of New Spain; but not to molest your Excellencies with details that may be inconvenient at present, I will confine myself to saying something on the province of Texas bounding on Louisiana, upon the demarcation of

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which depends the present questions. The province of Texas where the Spaniards have had settlements from the seventeenth century, bounds by the east with Louisiana, and contains the extensive country which lies between the river Medina, where ends the Government of Cohacula, to the post, now abandoned, of Nuestra Señora del Pilar, of the Adaes, which is distant a few leagues from the fort of Natchitoches; twenty leagues from the mission of Ais; forty from that of Nacogdoches; one hundred and fifty from the abandoned post of Oregisaw; two hundred from the bay of Espiritu Santo; and forty from the post of St. Antonio de Bejar.

It is beyond all doubt that in the year 1689, by a commission from the Viceroy of Mexico, the Marquis de Moncloa, Captain Alonzo de Lem, who was then Governor of the province of Cohacula, went to examine the bay of Espiritu Santo, and the river St. Mazers which empties into it, to whom the Indian chief of Texas presented himself in the most friendly manner, and in 1690 he took possession of the territory, and founded the mission of St. Francisco of Texas.

By a royal order of His Catholic Majesty, November 12, 1692, they ordered new discoveries to be made in the said province by land and sea, which was in consequence then executed, and among other things they undertook the examination of the river Codachos. Twenty-two years after, the Duke of Lenares, being then Viceroy of Mexico, introduced from Louisiana, as far as the Spanish port of St. Juan Baptista, a Frenchman, Louis St. Denis, and other three Frenchmen from Louisiana, with passports from the Governor of Louisiana to buy cattle in the Spanish Missions of Texas: which Frenchmen were carried to Mexico; and then the fourth expedition was resolved upon to Texas, naming as chief of it the Alfarez Don Domingo Ramon. The expedition was received with inexpressible friendship by the Indians; and the Captain Ramon named the chief of the said Indian nations, and also son to the Governor of Texas, and he left there founded the four establishments and missions of St. Francisco, La Purissima Concepcion, St. Josef, and Nuestra Señora de Gaudalupe, situated seven leagues from Natchitoches. By the royal order in 1719, they made various alterations in the command of the Spaniards employed in the province of Texas, and a little after died the said Captain Ramon in the port of St. Juan de Baptista on the river Granada. War having broken out between Spain and France during the regency of the Duke of Orleans, the French attacked the Spanish mission of Adaes, and its inhabitants were transferred for the moment to the post of St. Antonio de Bejar. But the Viceroy of New Spain, the Marquis de Valero, accepted the generous and honorable proposal which the Marquis St. Michael de Aguago made, offering his purse and person to dislodge the French of what they had unjustly seized and occupied, and to make war upon them. On being named Governor General of the New Philippines, or province of Texas, and of New Estremadura, the Marquis of Aguago raised five hundred dra-

goons and two companies of cavalry, and undertook his march for the province of Texas in 1779, and without opposition arrived at the Adaes, the French having returned to Post Natchitoches. The King of Spain being informed of this expedition, and the recovery of the province of Texas, determined to fortify it, and that all hostilities should be suspended against the French.

The Marquis de Aguago re-established the other missions and founded the establishments, among them the posts of Nuestra Señora del Pilar de los Adaes; that of Loretto, on the bay of Espiritu Santo; that of Dolores, which is now known by the name of Ozquisau, and improved the situation of St. Antonio de Bejar by placing the establishment between the rivers of St. Antonio and St. Pedro.

The province of Texas being thus at peace, and re-established and increased, the Marquis of Aguago solicited the reunion there of two hundred Tlascalcan families, and as many from Galicia, in Spain, or the Canaries; and with some of these families, the King having agreed that four hundred families should go from the Canaries, they peopled the village of St. Fernando, close to the post of Bejar.

At the end of the year 1730, the Spaniards undertook several expeditions from the post of Bejar to the north of said province, on account of a disagreement with the Indians; and, in 1758, the Indians made an attack from the northern part on the post of St. Saba, and killed some soldiers and priests; on which account a detachment was ordered against the said Indians, under the command of Colonel Don Diego Ortiz de Parilla.

A little after, it was determined to organize a general and uniform establishment of posts to cover the interior provinces of New Spain, and they ultimately gave a commission to the Marquis de Rubi to go and revisit and examine their state. And the result of this commission, which it appeared lasted some years, was, that on the 10th of September, 1772, the regulation of posts had so extended itself as to establish a cordon of them from the coast of Sonora to the bay of Mexico, where was situated the bay of Espiritu Santo, there being then in the province of Texas those of St. Antonio de Bejar, and that of the bay of Espiritu Santo, having neglected that of Arquisau and that of Nuestra Señora de los Adeas, which were no longer useful, as Spain was then the mistress of Louisiana.

From this simple and short explanation of those notorious and authentic facts, to prove the truth of which we find the most incontestable documents, supported by uninterrupted possession, results evidently the ancient and exclusive right which the Spaniards have to the province of Texas; that the possession of the province of Texas was acknowledged and respected by the French while they possessed Louisiana; and that the said province is belonging to, and has always belonged to, His Majesty.

That claim must be extremely illusory and unfounded which shall attempt to carry the western limits of Louisiana to the Rio Bravo, including

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therein great part of the interior provinces of New Spain, acquired and established at the cost of the treasures of Spain and the blood of her subjects, as has been proved to demonstration in the case of Texas, and can be strengthened more and more by a continued series of events and proofs relative to the said province of Texas and others of the interior provinces of New Spain, and also the acts and dates now existing respecting the subject. There are also many despatches, maps, and documents respecting this question, to be found in the Viceroyalty of Mexico, which is the principal centre of authority for all the provinces.

On my part, I have read with the greatest attention the memoir on the limits of Louisiana, which your Excellencies enclosed me in your note of the 28th of January, anxious to see if anything could be found to support or give a color to the claim of the United States to carry their limits to the Rio Bravo; but the said memoir goes principally to treat of the establishment of Louisiana. I only find that your Excellencies support the claim—first, in a gratuitous supposition that the coast belonged to France—a supposition that is contradicted by the most positive acts and dates abovementioned, by which it is proved that the province of Texas and its coast are belonging to the dominions of His Majesty. And, in the second place, in the general terms of the patent granted by Louis XIV. in September, 1712, in favor of Anthony Crozat, granting him the exclusive commerce of the country of Louisiana, whose extent was, as your Excellencies understand it, with all the waters which directly or indirectly discharge themselves into the Mississippi, and the countries which they water. It would be very easy to make it appear that the most exaggerated claims of France never had the extent which your Excellencies wish to give to Louisiana on this side. But even if they should have had such claims, or France positively should have tried to include, under the name of Louisiana, the territories which His Catholic Majesty possessed, what right or claim could be founded in a document which Spain never has recognised, nor does recognise, and which never could prejudice in any manner her acquired rights? The answer of Spain on this occasion is as simple as just: that, if Louis XIV. or the Government of France exceeded its powers in granting territories or rights over territories which were not their own, or that Spain claimed possession of, or property in, that grant ought to be considered as null as far as it extended over these territories, and that it flowed, without doubt, from the total ignorance which prevailed in those days with respect to the geography of the territories situated at a little distance to the west of the Mississippi, and of the establishments of the Spaniards in those parts, more ancient; and proved by repeated acts of possession, that the aforesaid patent of Louis XIV. is the royal order of the 12th of November, 1692, already cited, by which His Catholic Majesty ordered them to make new expeditions to the Texas; and the same are the other authentic acts and establishments of the Spaniards in that quarter.

The limits between Louisiana and the Texas have been always known, even when the French possessed Louisiana. Near the beginning of the last century, the venerable Alanjet, of the order of St. Francisco, founded, in the province of Texas, towards the confines of Louisiana, different missions, among them that of Nacogdoches. And a few years after he wrote, and it was generally known in the writings of those times, that the province of Texas, or New Philippines, had its boundaries about the middle of the Gulf of Mexico to Poncenes, the Rio Grande, and to the East Louisiana. Depending on Louisiana, we find upon the river Colorado, which discharges into the Mississippi, the post of Natchitoches, which the French took from Spain. But, about seven leagues from this, you find the aforementioned post of Nuestra Senora de los Adaes, belonging to the province of Texas; and it is undoubted that the Baron de Riporda, being Governor General of this province, and successor of Don Angal de Manos, appears to have made treaties and conventions with the Indians of the same province of Texas, stipulating that the Spaniards might make among them such establishments as they pleased, acknowledging from that time as depending on the province of Texas, the Indians Stydes, Nacogdoches, Asenares, Nobedacuis, Vidais, Ozquires, Malayes, Ocuanes, Tanques, and Apaches. To the year 1770, there always was in the fort of the Adaes, from the time of its establishment, a competent number of Spanish soldiers, and the same in that of Ozquisaz et St. Saba; and it was not until the year 1773 that the Lieutenant Don Josef Gonzales evacuated the post of Adaes, whose garrison was no longer necessary, as Spain possessed Louisiana.

It follows, therefore, that the boundary between the provinces of Texas and Louisiana ought to be by a line which, beginning at the Gulf of Mexico, between the river Caricut, or Cascassia, and the Armenta, or Marmentoa, should go to the north, passing between the Adaes and Natchitoches, until it cuts the Red river. And as from this point the limits which ought to be established on the northern side are doubtful and little known, it appears indispensable to refer them to the prudent investigation of commissioners to be named by both parties, in order that they, viewing the territory, and having with them documents and dates that will be given them, rectifying what ought to be rectified, and furnishing the necessary light to both Governments, upon limits which have never been fixed or determined with exactness, may thus enable them to fix the demarcation completely conformable to the wishes of both.

With these views, the Government of Spain, ever since it had definitively fixed the retrocession of Louisiana to France, named a commissioner of limits, destined to complete this important object jointly with the commissioners France might think proper to name on her part. In the same manner, it appears to me indispensable to do now, if the demarcation is to be made with the necessary exactness; and that the United States, naming on their part a commissioner of limits, that

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they should proceed by common accord, and make upon the territory the investigation which may be necessary. It is more than a year that the Brigadier General the Marquis de Casa Calvo, and the Engineer Don Josef Martinez, have, with a sufficient number of persons to form the said commission on the part of His Catholic Majesty, been waiting in New Orleans the arrival of the commissioners of the United States to begin their labors.

It is only after the researches and investigation of the commissioners of both parties, furnished with such instructions as may be proper, that we can pursue the exact demarcation of limits, which, never before having been fixed with the requisite exactness, cannot now be determined upon with prudence, but upon a view of the territory, and having present the dates and documents necessary to illustrate the subject.

Although upon this point of the western limits of Louisiana I could have extended myself much more in detail, and accompanied my illustration with maps and documents, my wish to answer your Excellencies on this point with promptitude prevented me. I, however, reserve to myself the power of doing so hereafter should it be necessary.

I hope your Excellencies, on reviewing what has been urged on this point, will please to state to me your opinions upon the subject, and that, you will acknowledge that, as well in it, as in the whole course of the negotiation, I have not deviated a jot from the principle proposed by your Excellencies in your first letter of the 28th of January, and adopted by me in that of the 31st of the same month—"Each of the points depending between the two Governments ought to be examined impartially, and all motives of complaint and inquietude considered and terminated amicably; to do which," &c., &c.

As I had the honor to state to your Excellencies in my letter of the 5th March, and believe it indispensable to repeat here, on perusing the contents of your Excellencies' letters of the 30th March and 12th April, I cannot but still consider it as premature to enter upon the forming of projects for a convention on the whole or upon the aggregate of the depending points, without analyzing them first, at least to a certain point, and without fixing the right of each country as far as possible; because, as your Excellencies must know extremely well, before we can proceed to a convention on the whole, it is necessary to know, as far as possible, what are the rights and obligations of His Majesty, and what are the rights of the United States and their objections; which knowledge by detail ought to be the foundation of the negotiations, it being clear that, according to the extent which we believe the right and obligations of the one and the other party ought to be, so ought the convention, upon the whole, to be the more or less extensive.

I hope to have the honor of receiving your Excellencies' answer on the point which is the object of this letter, and reiterate to you the demonstrations of my distinguished consideration, &c.

PEDRO CEVALLOS.

Messrs Monroe and Pinckney to Mr. Cevallos.

ARANJUEZ, April 20, 1805.

SIR: We had the honor to acknowledge the receipt of your Excellency's note of the 13th, to which we hasten to give a reply. It is not without much surprise, that we find by it that your Excellency should have construed the apprehension which we expressed in our note of the 30th ultimo, that you intended, by your silence, in not answering ours respecting the western limits of Louisiana for so long a term, to intimate a desire to terminate the negotiation at that point, as conveying any unfavorable imputation to your Excellency either in your public or private character. We do not hesitate to disavow any such intention, and to assure you that nothing was more remote from our views. In making this frank declaration, we must be permitted to add, that we do not think that that note, or any other that we have written, ought to have had such interpretation. We are persuaded that, in all negotiations, each party has a right to terminate that in which it is engaged, whenever it thinks proper, and that it is responsible for so doing to its own Government alone. This right seems to be incident to the very nature of such transactions, and not to be restrained by any promise made in the commencement, or afterwards, by either party, of what it proposes to do in the sequel, in respect to the mode of prosecuting it. Such promise must always be made on the idea, and be so understood by the other party, that the negotiation will be continued. It can never be construed in such a manner as to compel the party to continue it in case anything should occur to make it improper, in its judgment, so to do. It was in this light that we considered your Excellency's promise, and were, therefore, far from supposing that, in making the inquiry which we did, under existing circumstances, we violated any rule of decorum or delicacy. Whether there was sufficient cause for the impression we had taken in that respect, we will not pretend to say. It is, however, most certain that we thought there was, and for the following reasons: 1st, because unusual delay had occurred since our last communication, which we could not otherwise account for; 2dly, because, as your Excellency had repeatedly insisted on the relinquishment of the claim of the United States on Spain for compensation for French spoiliations within her limits, and seemed in your note of the 15th to put the continuance of the negotiation on that issue, we were naturally led to suspect, on our repeating the assurance that we were decidedly of a contrary opinion, and could not abandon the claim, especially after so long an interval, that you had come to that resolution. Having this view of the subject, we did not know but that your Excellency had adopted that mode of making known to us the views of your Government, as the one which was deemed most suitable to the purpose, and had even expected on our part to lead to a more full and explicit declaration of them. In making the application, which we did with regret, we followed no rule, but were governed by an impulse which

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the occasion excited, and we trust merits to be considered as an honorable one—one to which, your Excellency has shown too great a sensibility, or you would not have so much misconstrued our meaning. We repeat, therefore, that we neither intended, nor do we think that any of our letters ought to be construed to convey any imputation unfavorable to your Excellency in your public or private character, for which we renew the assurance of our high consideration and respect.

Our note of the 9th instant (for that of the 12th was only founded on it) was intended as a justification of the part which, under existing circumstances, we deemed it our duty to take. We intended it as a justification of our conduct equally to His Majesty's Government and our own. We were of opinion, for the reasons therein stated, that, as there was no prospect of obtaining an accord on such terms as our Government thought reasonable and just, and as our Government and ourselves were compromitted by the manner in which the negotiation continued to be conducted, that it was not only useless but highly improper for us to pursue it. It is usual, in all negotiations, especially in important concerns, for one of the parties to present to the other a project of a treaty or convention for the arrangement of the objects in contemplation, founded on his instructions, and to receive from the other party a like one in return, in case any difference of opinion appeared on any point between them. It is by an exchange of such projects, that the views of their respective Governments are seen, and each party is enabled to determine at once whether there is any prospect of an agreement, and to act accordingly; it is by such exchange that the points of agreement and difference between them are shown, and that the topics of discussion are distinctly marked, in case the negotiation is carried to that length; it is, in short, by it, and by it alone, that the basis of the negotiation is formed, and the parties to it placed on equal ground. Whenever this rule is departed from, it must be to the disadvantage of the party whose case forms an exception to it. It is in the power of the other to continue the negotiation as long as he thinks fit, and finally to break it off, if he is so disposed, on his own terms. When we did ourselves the honor to present to your Excellency, on the 28th January, our project for the arrangement of the points in question, with our note explanatory of it, it was in the expectation that we should have received a counter one in return, in case its conditions were not approved, with a note explicit to every point. We do not say that an express agreement to that effect was entered into, but as it was agreed that we should commence the negotiation in that mode, and, as it was known to be the established usage in such cases, we concluded that the business would necessarily take that course. In that expectation, however, we are disappointed in both respects. It was, perhaps, our duty to have declined proceeding in the negotiation until we were furnished with such a communication; and, had we done so, we presume it could not have been refused. By proceeding in it as we have done, in the mode

adopted by your Excellency, we were governed, as heretofore observed, by a spirit of conciliation, in the belief that in that mode we should obtain the same, without any essential difference in point of time. In these latter respects we were also disappointed. Your Excellency has repeatedly observed, that you had followed the mode which we had recommended; but you will permit us to remark that, in this respect, your Excellency has altogether misapprehended our idea, in one of its most important features. We said, it is true, in our first note, that it was proper to ascertain the rights of each nation on each point, and we still say so. But did it follow from thence that we were willing to dispense with the ordinary mode of proceeding in such cases? with the just claim to a counter project or proposition from your Government? Did we consent to a mode of discussion in which each point should be made the subject of separate notes, and that these should be subdivided, and each subdivision become so? a mode which tended to create unavoidable delay. Most certainly nothing can be found in any communication from us, which gives the slightest approbation to such a proceeding. It is contrary to that which we expected would have been pursued in the negotiation; it is contrary to that in which we commenced it; and it has been the subject of serious and frequent complaint on our part since. It was after we saw with regret that three months had been consumed without effect, that unusual and unexpected delays had taken place in the discussion, which seemed likely to be protracted to an indefinite length of time, that no basis of the negotiation was laid; no propositions were presented, though often requested with as much earnestness as delicacy would permit; and that to those which we did ourselves the honor to present, we were answered, not in a spirit of accommodation, but with demands that we should surrender unconditionally the just claims of our Government in some of the most important points, that we wrote that letter. To a situation so improper, it was impossible for us to remain longer insensible. We could not but recollect, independent of the justice of our pretensions, that some consideration was due to the friendly and respectful advance that was made by our Government; that special missions in their nature require despatch, and generally receive it; that on former and important occasions those of the United States had received it from France, Spain, and Great Britain; that to the present one, by many causes, the public sensibility had been much excited, and that our Government waited with anxiety the result: in addition to which, that one of the parties to it was the representative of the United States at another Court, where their interests suffered by his absence. It was on a full view of these circumstances that that measure was taken—circumstances which appeared to us to be too imperious to have any cause for hesitation. In writing the letter, we meant, as already observed, to vindicate our own conduct to both Governments. We did not mean in the slightest degree to call in question the right of His Majesty's Government to manage the ne-

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gotiation, or to conclude it in such mode as it thought fit. We only claimed to ourselves a right to withdraw from it, and report the result to our Government when it appeared to us impossible, after making due exertions, to accomplish the objects of our mission.

In our letter of the 9th, we invited again your Excellency's propositions, which have not been furnished. Your Excellency has, however, furnished us with your observations on the last point of discussion, that of the western limits of Louisiana, by which the negotiation approaches a conclusion in its ordinary form, by treaty or otherwise, which your Excellency seems desirous to give it. Our wish has been invariably the same on this point, and we now feel ourselves called on, under existing circumstances, to give a new and signal proof of our disposition to conciliate. Anxious to adjust at this time the subsisting differences, and place the relations of the two countries on a basis of permanent friendship, by arrangements founded on their common interest, we will not put to hazard these great concerns, by any act which may possibly impute the failure to us. Influenced by these considerations, we shall proceed to discuss this last point in reply to your Excellency's note, although the propositions have not been furnished, in the expectation that, after the discussion on this point is finished, as we trust it hereby will be, we shall experience on your part an equal co-operation to conclude the negotiation itself with the utmost promptitude.

We have gone thus into detail, to place in its true light the part we have acted in these concerns, and the motive of it. The negotiation naturally forms an interesting epoch in the political relations of the two Powers, and it is important to the United States that it should be seen that nothing was omitted on their part which was due to the claims of justice and good neighborhood on the part of His Catholic Majesty.

In examining the question respecting the western limits of Louisiana, we are to be governed by those facts and principles which would have been applicable to France had she never parted with the province. All the rights which she formerly possessed over it were restored to her by the treaty of St. Ildefonso, and by her transferred to the United States by that of Paris, of 1803: to ascertain these, it is necessary to go back to that epoch when the river Mississippi, with the waters which empty into it, and when the bay of St. Bernard were just discovered. The boundary to the West was never traced by an exact line of demarcation between that province and the possessions of Spain; and, in settling it at this day, the same principles and facts must govern as if it had been then made.

The facts which are material in the case are such as relate to the discovery and possession of the territory referred to by the subjects and under the authority of each nation. The principles are those which have been recognised by European Powers in similar transactions, and which of course ought to govern in the present one. It is by a correct view of the material facts, and the faithful application of these principles to them,

that the right of each nation will be established in this point, and thereby the boundary between them.

By the memorial which we had the honor to present to your Excellency on the 28th January last, the epoch of the discovery of the Mississippi and of the waters which empty into it, and of the bay of St. Bernard, and of the taking possession of the same, and of the country dependent thereon, is proved by documents which cannot be questioned. By these it is established, in respect to the Mississippi, its waters, and dependent country, as low down the river as the Arkansas, by the Sieurs Joliet and Marquette from Canada, as early as the year 1673, and to its mouth by the father Hennison, in 1680, and by De la Salle and Joutel, who descended the river with sixty men to the ocean, and named the country Louisiana, in 1682, and in respect to the bay of St. Bernard, in 1685. This was done at those periods in the name and under the authority of France, by acts which proclaimed her sovereignty over the whole country to other Powers, in a manner the most public and solemn, such as making settlements and building forts within it. Of these, it is material to notice in the present inquiry two only, which were erected in the bay of St. Bernard, on the western side of the river Colorado, by M. de la Salle, who landed there from France with two hundred and forty persons, in 1685. It was on the authority of the discovery thus made, and of possession so taken, that Louis XIV. granted to Anthony Crozat, by letters patent, bearing date 1712, the exclusive commerce of that country, in which he defines its boundary, by declaring that it comprehended all the lands, coasts, and islands, which are situated in the Gulf of Mexico, between Carolina on the east, and Old and New Mexico on the west, with all the streams which empty into the ocean within those limits, and the interior country dependent on the same. Such are the facts on which the claim of France rested: such are those on which that of the United States now rests.

The principles which are applicable to the case are such as are dictated by reason, and have been adopted in practice by European Powers, in the discoveries and acquisitions which they respectively made in the new world: they are principles intelligible, and, at the same time, founded in strict justice. The first of these is, that when any European nation takes possession of any extensive sea-coast, that possession is understood as extending into the interior country, to the sources of the rivers emptying within that coast, to all their branches and the country they cover; and to give it a right, in exclusion of all other nations, to the same, (memoir—, page 116,) it is evident that some rule or principle must govern the rights of European Powers, in regard to each other in all such cases: and it is certain that none can be adopted in those to which it applies, more reasonable or just than the present one. Many weighty considerations show the propriety of it. Nature seems to have destined a range of territory, so described, for the same society; to have connected its several parts together by the ties of a common interest, and to have detached them from others.

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If this principle is departed from, it must be by attaching to such discovery and possession a more enlarged or contracted scope of acquisition; but a slight attention to the subject will demonstrate the absurdity of either. The latter would be to restrict the rights of a European Power, who discovered and took possession of a new country, to the spot on which its troops or settlements rested: a doctrine which has been totally disclaimed by all the Powers who made discoveries and acquired possessions in America. The other extreme would be equally improper; that is, that the nation who made such discovery should, in all cases, be entitled to the whole of the territory so discovered. In the case of an island, whose extent was seen, which might be soon sailed round, and preserved by a few forts, it may apply with justice; but in that of a continent, it would be absolutely absurd; accordingly, we find that this opposite extreme has been equally disclaimed and disavowed by the doctrine and practice of European nations. The great continent of America, north and south, was never claimed by any one European nation, nor was either portion of it. Their pretensions have been always bounded by more moderate and rational principles. The one laid down has obtained general assent.

This principle was completely established in the controversy which produced the war of 1755. Great Britain contended that she had a right, founded in the discovery and possession of such territory, to define its boundaries, to given latitudes in grants to individuals, retaining the sovereignty to herself from sea to sea. This pretension, on her part, was opposed by France and Spain, and was finally abandoned by Great Britain in the treaty of 1763, which established the Mississippi as the western boundary of her possessions. It was opposed by France and Spain on the principle here insisted on, which of course gives it the highest possible sanction in the present case.

The second is, that, whenever one European nation makes a discovery, and takes possession of any portion of that continent, and another afterwards does the same at some distance from it, where the boundary between them is not determined by the principle above mentioned, the middle distance becomes such of course. The justice and propriety of this rule is too obvious to require illustration.

A third rule is, that, whenever any European nation has thus acquired a right to any portion of territory on that continent, that right can never be diminished or affected by any other Power, by virtue of purchases made, by grants or conquests of the natives within the limits thereof. It is believed that this principle has been admitted and acted on invariably since the discovery of America, in respect to their possessions there, by all the European Powers. It is particularly illustrated by the stipulations of their most important treaties concerning those possessions, and the practice under them, viz: the Treaty of Utrecht, in 1715, and that of Paris, in 1763. In conformity with the tenth article of the first mentioned treaty, the boundary between Canada and Louisiana on the

one side and the Hudson's Bay and Northwestern companies on the other, was established by commissaries, by a line to commence at a cape or promontory on the ocean, in 58° 31' north latitude, to run thence, southwestwardly, to latitude 49° north from the equator, and along that line indefinitely westward. Since that time, no attempt has been made to extend the limits of Louisiana or Canada to the north of that line, or of those companies to the south of it, by purchase, conquest, or grants from the Indians. By the Treaty of Paris, 1763, the boundary between the present United States and Florida and Louisiana, was established by a line to run through the middle of the Mississippi, from its source, to the river Iberville, and through that river, &c. to the ocean. Since that time no attempts have been made by those States since their independence, or by Great Britain before it, to extend their possession westward of that line, or of Spain to extend hers eastward of it, by virtue of such acquisitions made of the Indians. These facts prove incontestably that this principle is not only just in itself, but that it has been invariably observed by all the Powers holding possessions in America, in all questions to which it applies relative to those possessions.

The above are the principles which we presume are to govern in the present case. We will now proceed to apply these principles to the claim of the United States, as founded on the facts above stated, relative to the discovery and possession of Louisiana by France, and to designate the limit to which we presume they are justly entitled, by virtue thereof, in the quarter referred to.

On the authority of the principle first stated, it is evident that, by the discovery and possession of the Mississippi, in its whole length, and the coast adjoining it, the United States are entitled to the whole country dependent on that river, its several branches, and the waters which empty into it, within the limits of that coast. The extent to which this would go, it is not in our power to say; but the principle being clear, dependent on plain and simple facts, it would be easy to ascertain it.

It is equally evident, by the application of the second principle, to the discovery made by M. de la Salle of the bay of St. Bernard, and his establishment there on the western side of the river Colorado, that the United States have a just right to a boundary founded on the middle distance, between that point and the then nearest Spanish settlement, which, it is understood, was in the province of Panuco, unless that claim should be precluded on the principle first above mentioned. To what point that would carry us, it is equally out of our power to say; nor is it material, as the possession in the bay of St. Bernard, taken in connexion with that on the Mississippi, has been always understood as a right to extend to the Rio Bravo, on which we now insist.

In support of this boundary, we rely much on the grant of Louis XIV. to Anthony Crozat, in 1712. That grant, it is true, establishes no new right to the territory. The right had already accrued by the causes and to the extent contended for, which was never abandoned afterwards, ex-

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cept by the treaty of 1763, which does not affect the present question.

This boundary is also supported by the opinions of the best informed persons who have written on the subject, with which we have become acquainted. By an extract from a work on Louisiana, written by the Colonel Chevalier de Champigny, in 1773, who, being of the country, was doubtless well informed, the Rio Bravo is laid down as the western boundary of that province. The fact is again asserted, with more minuteness, in his second note to that work, in which he states that Louisiana was bounded, before the treaty of 1763, to the west, by the mountains of New Mexico and the Rio Bravo. In a book containing several memoirs on different subjects, published about three years since at Paris, is one entitled a "Memoir, historical and political, on Louisiana, by the Count de Vergennes, Minister of Louis XVI," in which it is stated that Louisiana is bounded to the east by Florida, and to the west by Mexico. The opinion of geographers, in general, confirms that of other writers. By a chart of Louisiana, published in 1763, by Don Thomas Lopez, geographer to His Catholic Majesty, it appears that he considers the Rio Bravo as the boundary of the province, as it does by that of De Lisle, of the Royal Academy of Sciences at Paris, which was revised and republished in 1782. Others might be quoted, but it is useless to multiply them.

Having thus shown the principles on which the United States found their claim to the Rio Bravo as the western boundary of Louisiana, we will proceed to examine the claim of Spain which is opposed to it, as presented by your Excellency, in your esteemed note of the 13th inst. We find by it, that all the facts relied on in support of the claim of Spain, relate to the province of Texas, the whole of which lies eastward of the Rio Bravo, and, as we suppose, within the limits of Louisiana. They amount to this, at different epochs, certain religious missions were established within that province, the first of which was in 1690; that, in 1692, a royal order issued, directing new discoveries to be made in it, under which the river Colorado was explored; that, in 1714, Louis St. Denis, a Frenchman, with a passport from the Governor of Louisiana, made a visit to Mexico on some commercial projects, passing by the Spanish post St. John the Baptist, on the Rio Bravo, at which time Don Diego Lamón was sent into the province of Texas, where he was well received by the Indians, among whom he then founded several religious missions, one of them at a post within seven leagues of Natchitoches; that treaties were afterwards made with some tribes of Indians, who acknowledged their dependence on Spain, that, during the regency of the Duke of Orleans, hostilities took place between the French and Spaniards, in which the former attacked the latter at Adais and, broke up the establishment for a time; that, in 1730, the situation of the post Antonio de Bejar was improved by the Marquis de Aguayo, who settled a certain number of families in its neighborhood; that, in 1775, hostilities took place with the Indians, who attacked the post of St. Saba,

and killed some soldiers and priests; in consequence of which, a detachment was sent against them, under the command of Don Diego Otiz Pamille; that, after this, the Marquis de Rubi was empowered to organize a system of defence for the provinces of New Spain, which was completed in the year 1772. These, we believe, are all the facts stated by your Excellency, on which we think proper to make a few remarks.

It is evident, as every fact above stated was posterior, and even by many years, to the completion of the title on which the United States rely, that if the principles by which they support that title are sound, there is not the slightest foundation for the claim of Spain to rest on. Every act of Spain, within the limits which it appears justly belonged to France, was an encroachment, which the friendly relations between the two Powers might authorize in a wilderness, but which could give no title. That those acts were considered by the French as encroachments at the time they were made, is proved by many facts and documents the most authentic. In respect to the Spanish post, in the neighborhood of the Natchitoches, on which your Excellency seems chiefly to rely, we beg to refer you to Colonel Champigny's work, page 10 of his notes, by which it is stated, that the post which the Spaniards had established there was on the territory of the French. We refer you also to Du Praty's History of Louisiana, volume 1, page 12; by which it appears that the Spaniards were introduced there under the auspices of the French, by Louis St. Denis, to favor a contraband trade with Mexico; that the favorable reception given by the Indians to Don Diego Ramon was owing to St. Denis, who was recognised by them as their great chief; prior to which year, it appears, by the same author, that there was not an establishment of any kind east of the Rio Bravo, and only that of St. John the Baptist on the western bank of it. But the most authentic and conclusive of all proofs of the light in which these acts of the Spaniards were viewed by the French is, that hostilities actually did take place between them respecting those posts, which history has recorded, and your Excellency admitted.

Your Excellency has noticed, in your statement, some concessions or acknowledgments made to the Spaniards by the Indians of their dependence on them; but these, it is presumed, could convey no title to the sovereignty of the territory against France. The third principle relied on above is conclusive to this effect. Within the known limits of Mexico, there is a vast tract of vacant territory to the north, held and inhabited by the Indians. If any other Power was to treat with, and receive similar acknowledgments of them, would Spain admit that the territory was thereby transferred from her to such Power?

On this view of the subject, in which we have attempted to illustrate more in detail, but have added little to the contents of the memorial which we had the honor to present to your Excellency, on the 28th January last, we rest the title of the United States to the Rio Bravo as the western

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boundary of Louisiana. As every point has been thus fully discussed, we flatter ourselves that we shall now be honored with your Excellency's propositions for the arrangement of the whole business. The country on both sides of the Mississippi is yet a wilderness, and it is important to make those arrangements which their mutual interests may require while it is so. As your Excellency is possessed of the sentiments of our Government on every point, it is unnecessary to add more than to repeat, that on receiving your Excellency's propositions we shall have every disposition to conciliate the views and interests of His Majesty's Government which can be expected from the just and friendly policy of the United States.

We request your Excellency to accept, &c.
CHARLES PINCKNEY.
JAMES MONROE.

DON PEDRO CEVALLOS.
First Secretary of State, &c.

Messrs. Pinckney and Monroe to Mr. Cevallos.

ARANJUEZ, May 12, 1805.

SIR: Animated by the same desire which has governed us since the commencement of the negotiation, and influenced by that which was expressed by your Excellency in our interview last evening, we are willing to state the ultimate conditions on which we are authorized to adjust the several points depending between our Governments. With this view, we do ourselves the honor to inform your Excellency that, on condition His Catholic Majesty will cede the territory eastward of the Mississippi, and arbitrate the claims of the citizens and subjects of each Power, according to the convention of August 11, 1802, we will make the Colorado the boundary between Louisiana and Spain, by a line to be run in the manner proposed in the project which was presented on the 28th January last, the United States ceding all right to any territory westward of that line; we will establish a district of territory of thirty leagues on each side of that line, or on the American side only, if preferred by Spain to be run from the Gulf of Mexico to the northern boundary of Louisiana, which shall remain neutral and unsettled for ever; we will relinquish the claim to spoiliations which were committed by the French within the jurisdiction of Spain, in the course of the last war, the United States undertaking to compensate the parties in a sum to be specified; and we will also relinquish all claim to compensation for the injuries which were received by the suppression of the deposit at New Orleans. Your Excellency will, we are persuaded, see in these propositions a most unequivocal proof of the sincere desire of our Government to meet the views of His Catholic Majesty in the points referred to, in a spirit of conciliation and concession, to place the friendly relations of the two Powers, who, as neighbors, have so many and powerful motives to promote that object, on a basis never to be shaken. We have endeavored also to give the strongest proof in our power of

our disposition to conciliate the views which have been expressed on two points by His Majesty the Emperor of France, since, in case His Catholic Majesty adopts the propositions, and cedes the whole of the territory eastward of the Mississippi, we are willing to accept the cession of West Florida from him; and, in assuming the payment to our citizens of their claims for French spoiliations, we make it, as we presume, in a great measure, without any consideration whatever, as we consider that the concession which we propose to make on the western side of the Mississippi is, in itself, an equivalent for all the territory claimed by Spain on its eastern side. If these propositions are accepted, we have to request that your Excellency will be so good as to notify us of it, that a convention founded on them, may be concluded without delay. If they are rejected, we have then to request that your Excellency will consider the United States as in no respect bound by them, and the whole subject as standing on the same ground, in any future negotiation, as if none such had been made. In either event, we have to request that your Excellency will be so good as to give us an early and explicit answer to the same.

We request your Excellency to accept the assurance of our distinguished consideration and esteem.

CHARLES PINCKNEY.
JAMES MONROE.

DON PEDRO CEVALLOS.
First Secretary of State, &c.

P. S. We do ourselves the honor to enclose your Excellency the two notes which we submitted to your view last evening, with our signatures.

Propositions to the Secretary of State.

On condition that Spain will cede, on her part, the territory to the east of the Mississippi, and arbitrate her own spoiliations conformably to the convention of August 11, 1802, the United States will cede, on their part, their claim to territory west of a line to be drawn from the mouth of the Colorado to its source, and from thence to the northern limits of Louisiana, in such manner as to avoid the different rivers and their branches which empty into the Mississippi.

They will establish a territory of thirty leagues on both sides of this line, which shall remain unsettled forever, or of thirty leagues, on their own side, if Spain desire to extend her settlements to the Colorado.

They will also relinquish their claim for French spoiliations, which amounts to one hundred and sixty-four vessels, by undertaking to satisfy the parties themselves in a sum to be specified.

They will relinquish, likewise, their claim to compensation for the suppression of the deposit at New Orleans.

From the 1st of October 1796, until the —, there were brought into the ports of His Catholic Majesty, in Europe and Africa, by the French, 168 vessels.

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Of the above, have been condemned,	- 74
Acquitted, ransomed, or compromised,	- 23
	— 97
Cases of the violation of the Spanish territory, condemned,	- - - 13
Run ashore and lost,	- - - 1
Unaccounted for,	- - - 7
Result not known,	- - - 50
	—
Total by the French,	- - - 168

A statement of the facts relative to American vessels taken by French privateers, and brought into Spanish ports, obtained from the most authentic sources.

Of the French spoliations, there have been fifty appeals from the consular judgments in Spain to the Council of Prizes at Paris, of which thirty have been released, nine condemned, and twelve are yet depending. Not one sou has been paid in any case, nor is there a single case of such spoliations on the list of liquidations now at the French treasury, which are to participate of the twenty millions of livres to be paid by the United States to their citizens, under the treaty of 1803, on account of French spoliations.

The American Minister never did demand payment of French spoliations made in Spain, knowing them as such; nor did the American agent ever demand it by his order or knowledge. The first intelligence which the American Government had of appeals being permitted from the French Consular tribunals in Spain to the Council of Prizes in France, was received from Spain herself. As soon as it was received, the Secretary of State wrote to the American Minister in Paris, to know what the fact was, and instructed him at the same time, to prohibit the agent from acting in such cases, it having been at all times the opinion of the Government that Spain alone was answerable, of whom only has the recompense been demanded.

Taken by the Spaniards, since the 1st of October, 1796, until the —, 104 vessels and 4 cargoes. Of these have been condemned 29 vessels. Acquitted, ransomed, or compromised, 51. Disappeared, unaccounted for, or depending, 24. Total by the Spaniards, 104 vessels, 4 cargoes.

His Excellency Don Pedro Cevallos to Messrs. Monroe and Pinckney.

ARANJUEZ, May 15, 1805.

GENTLEMEN: I have read, with due attention, your esteemed note of the 12th, and the propositions you have been pleased to make in the name of your Government, reduced to the following: that Spain shall cede the Floridas, on her part, and shall arrange the point of the claims of the individuals of both nations, conformably to the convention of the 11th, August, 1802; and that, on their part, the United States would fix the river Colorado as the limit between Louisiana and the Spanish possessions, in the form that the said note expresses; and that they will abandon the claim arising from the damages occasioned by the French on the coasts and in the ports of

Spain, during the last war, as also that for indemnification for damages occasioned by the suspension of the deposit at New Orleans.

On viewing these propositions, I cannot refrain from saying to your Excellencies that I do not see in them any convenient terms for entering into the exchange or contract proposed; for, although His Majesty has the power to bargain for the Floridas, as owner of them, in the fullest extent, and has also the right, if he pleases, to ratify the convention of August 11, 1802, which is suspended for the reasons your Excellencies know, there are wanting equal right and power in the United States to make the cession your Excellencies mention. The United States having no right to demand of Spain compensation for damages occasioned by the French privateers, as I have demonstrated in my notes on that point, and to which I again refer, Spain, therefore, could not receive from the United States the renunciation of a right they have not, and which she does not recognise as belonging to them. The same may be said as to the claim for the suspension of the deposit at New Orleans, and as to the claim to fix the limit of Louisiana at the Rio Bravo; from which claim flows the assertion, that the fixing it at the Colorado is to be considered as a cession. It is equally necessary for me to observe to your Excellencies, that the Spanish Government has made it appear, and is equally ready to show more and more, by the most irrefragable proof, that the limit which separates Louisiana and the Spanish possessions is a line which, beginning in the Gulf of Mexico, between the rivers Caracut or Carcase and the Armentia or Marmentao, ascends towards the north, between the Adais and Natchitoches, until it cuts the Red river; and as from this point they are doubtful and little known, the limits which ought to be marked on the northern side appear to be proper subjects for reference to the prudent investigation of commissioners of limits, to be named by both parties; who, having the view of the territory, and all the documents and dates which may be necessary, before them, rectifying what ought to be rectified, and furnishing the light necessary to both Governments, on limits which have never yet been fixed or determined with all the exactness necessary, may be thus able to establish the demarcation completely to the satisfaction of both Governments.

In this view of the subject, it cannot be concealed from the penetration of your Excellencies, that, as a consequence of the propositions you have made by your note of the 12th, Spain would cede to the United States, not only the territories which indisputably belong to her to the east of the Mississippi, that is the two Floridas, but also others, equally her own, in the interior province of New Spain, without receiving anything in return but the renunciation of a right which she does not acknowledge in the United States, which is, to reclaim for the damages arising from the suspension of the deposit, and for those occasioned by the French privateers, on the coast and in the ports of Spain, during the last war;

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when, on the contrary, Spain thinks she has shown that she is in no manner liable for the same.

The justice of the American Government will not permit it to insist on propositions so totally to the disadvantage of Spain; and, however anxious His Majesty may be to please the United States, he cannot, on his part, assent to them, nor can he do less than consider them as little conformable to the rights of his Crown.

I renew to your Excellencies the demonstrations, &c.

PEDRO CEVALLOS.

Messrs. Monroe and Pinckney to His Excellency Don Pedro Cevallos.

ARANJUEZ, May 18, 1805.

SIR: We have received your Excellency's letter of the 15th instant, by which we perceive, with regret, that the propositions which we had the honor to make to His Majesty, on the part of our Government, on the 12th instant, for the adjustment of the several points depending between the United States and Spain, have been absolutely rejected. By this answer, which we presume is given by the order of His Majesty, we consider the negotiation concluded; we have, therefore, only to remark, that we shall hasten to communicate the result to our Government, who will not fail to bestow on it the attention which is due to a concern of such high importance to the United States. The special mission to His Catholic Majesty being thus ended, it becomes the duty of Mr. Monroe to repair immediately to London, where he is resident Minister of the United States; for which purpose, your Excellency will be so obliging as to furnish him with the necessary passport. As preparatory to that step, we have to request your Excellency will be so good as to obtain for him an early audience of their Majesties, that he may be enabled to take his leave of them; and, at the same time, to renew the assurance of the high consideration entertained for them by our Government.

We beg your Excellency to accept the assurance, &c.

CHARLES PINCKNEY.
JAMES MONROE.

His Excellency Don Pedro Cevallos to Messrs. Pinckney and Monroe.

ARANJUEZ, May 20, 1805.

GENTLEMEN: Having given an account to their Majesties of the contents of your esteemed letter of the 18th, in which you request the necessary passport for Mr. Monroe to return, agreeably to his wish, to his residence at London, obtaining before his departure an audience of leave, their Majesties have fixed to-morrow, being Wednesday, at half-past eleven, for the audience which Mr. Monroe wishes, and, without loss of time, I shall have the honor to send the necessary passport for Mr. Monroe.

I have the honor to reiterate the demonstrations of my distinguished consideration. &c.

PEDRO CEVALLOS.

Mr. Monroe's address on taking leave.

On my arrival here, I had the honor to assure your Majesty of the high consideration of my Government for your Majesty's person and Government. I then hoped to have had the honor to conclude the special mission with which I was charged, in conjunction with the Minister Plenipotentiary of the United States near your Majesty, to the advantage and satisfaction of both parties; but being disappointed in this respect, all propositions, which we deem just, being rejected, and none others ever offered on the part of your Majesty's Government, though often invited, it is my duty to return to my station at London. We have transmitted the result to our Government for its decision. Under these circumstances, I have thought it my duty to take leave of your Majesty in the usual form. In so doing, I avail myself of the occasion to assure your Majesty, an assurance which I give with pleasure, of the high consideration of my Government, and of the pleasure it would have derived from an amicable adjustment, on just and fair principles, of all the questions depending between the two nations, to accomplish which it has made so many friendly advances and exertions.

Messrs. Monroe and Pinckney to Mr. Madison.

ARANJUEZ, May 23, 1805.

SIR: We are sorry to inform you that the negotiation with which we were charged by the President with the Government of Spain is concluded, after failing in all its objects, notwithstanding our unwearied and laborious exertions, for so great a length of time, to procure for it a different result. We have heretofore availed ourselves of such opportunities as offered to transmit you copies of the papers which had passed in our correspondence with the Minister of Spain on the subject, at the dates of our several letters which accompanied them, by which you were apprized of the tone which this Government had assumed in the negotiation. We have now the pleasure to transmit to you, by Captain Dulton, a copy of those, and every subsequent paper which has passed in it. These will give you so clear a view of the transaction, that you will not be at a loss for the policy of Spain in the business, or of the motives which governed us in every stage of it. We endeavored, in obedience to our instructions, to adjust the differences subsisting between the two countries, on such conditions, and to establish their future relations by such arrangements, as were in our judgment safe, honorable, and advantageous to Spain, and we pursued the object in a mode the most conciliating that we could adopt. In respect to the conditions, we were, indeed, willing to make some sacrifice on our responsibility, in the persuasion that, under existing circumstances, our conduct would be approved. But a very different spirit animated this Government in every respect. We experienced, on its part, neither a spirit of candor nor conciliation in the management of the business, nor of accommodation in the conditions. In this latter point it has

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disclaimed our rights in every question on which it was possible that a difference of opinion could exist; it has pushed the pretensions of Spain to the most extravagant extent in each; and insisted, finally, in a tone not a little imperious, that those exaggerated pretensions should be the standard by which the subsisting differences and their future relations should be regulated. So far as depended on us, the business might have been ended in a few weeks, but nothing was more remote from the views of this Government than to bring it to an early conclusion. On the contrary, its ingenuity was displayed in an effort to prolong the negotiation to the latest possible epoch. When we asked of the Minister the acceptance or rejection of our propositions, he replied, that he could do neither till His Majesty should be correctly informed of his rights; that a discussion of every point was necessary to give him that information; and that, after he obtained it, he should give us the answer which we desired. Seeing very distinctly, almost from the commencement, that we had nothing to expect from the justice or friendship of this Government, and being of opinion that the delay which was so studiously sought on its part was with no friendly views to us, we resolved, as early as the 12th of February, to push the business to a conclusion as soon as we could consistent with that respectful course of conduct which might be necessary to procure it a favorable one. With this view, and as we saw that he disapproved of our propositions, we called on him, in a note of that date, for his own, to which we received a similar reply. His Majesty, he said, was not yet informed of his rights in the points in question; he must get that information from discussion; and, after the discussion should be ended, that he would proceed, by negotiation, to the arrangement of the whole business, in such manner as might prove of advantage to both countries. In our interviews, he repeatedly intimated, that although we might disagree on every point in the discussion, yet that his Government would be willing, after it was gone through, on a view of the whole subject, to make some sacrifice, as he termed it, to obtain an amicable adjustment. It became, therefore, necessary, even at this period, to decide whether it would be best to desire an explicit answer to our propositions, and, in case it was refused, to end the negotiation at that stage of the discussion. We bestowed on this point all the consideration which it merited; and the result of our deliberation was, that it would be best to proceed in the discussion till it was concluded; in a belief, however, that that would soon take place. We did not wish to furnish any pretext to his Government, how little plausible soever it might be, to sanction his declining to settle by treaty all the differences subsisting between the United States and Spain at this time. We thought it might be useful to answer some of his remarks, and to place in a more distinct light some of the questions that were involved in it; and we were not aware that the delay necessarily incident to it would put us in a less favorable situation to obtain a compliance with our just demands; in addition to

which, it seemed proper for us to wait and see what the sacrifices were which he proposed to make when the discussion was concluded, and to which we were the more disposed, from a presumption, against the evidence of very strong facts, that this Government must have too just a knowledge of its interest to court a contest with us, especially by refusing its assent to the just and reasonable terms on which we insisted. Under these impressions, we proceeded in the business for some time, till finally there remained only one point, that of the western limits, to be treated of. Here it appeared to us that Mr. Cevallos had resolved to terminate it, having failed for so long a time to answer our last note, after having pressed some point in a manner to excite that expectation. We asked him, by note of the 30th March, if such was his intention, intimating, if it was, that we should not oppose it. He replied, that it was not, and that he should send us a note, as soon as he could, on the western limits. We waited several days for his note, without receiving one; we then desired an interview, in which we asked him when we should receive one? He replied, as soon as possible; that he was engaged in it. Would it be in the course of the week? It would not. In the course of the next? He could not promise it; he could neither fix the day nor the week. How long did he think it would require to conclude the business, that is, for him to be ready to conclude it, since it depended on him, as we could terminate it at once, and had been ready so to do from the commencement? He thought it was possible to finish it in three months from that time but would not engage for it. It was on this conversation that our note of the 9th of April was written, which obtained from him his reply of the 12th, and in it his essay on the western limits. We had resolved when our note of the 9th was addressed, to proceed no further in the discussion till we received his propositions, and intimated to him in it that we deemed it incompatible with our duty so to do. But, as we had now entered on the last point of discussion, which brought the business in his own mode so near a conclusion, as we wished to show the absurdity of his arguments on that point, and to establish, in reference to it, the perfect solidity of our claim to the Rio Bravo; and, also, as we wished to remove some impressions of a personal nature, which he seemed to have taken from our notes of the 30th of March and 9th of April, and in a spirit of perfect conciliation to open the door again to, and invite on terms the most liberal, the amicable adjustment of the business, we resolved to waive all form, and to proceed to the discussion. Accordingly, we answered his note on the western limits, in which we also took a review of the part which we had respectively acted in the negotiation, placed in its true light the conduct of each party, and again invited his propositions. The note bore date on the 20th of April, seven days after that of his, to which it was in reply, and to which we expected, of course, an early answer. We waited patiently for one till the 1st instant without effect; when it being the day of his weekly rendezvous with the several

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members of the diplomatic corps, we asked him, in a private interview, when we should hear from him on the subject of our last. He said it would be soon, as he was engaged on it. Would it comprise propositions? To which his reply was understood to be in the affirmative. Another week had elapsed, when a similar occasion furnished another opportunity to make the same inquiry. His reply to it was still equally vague and unsatisfactory. As we had anticipated such a one, we had made up our mind as to the part it became us to act in that event. We had resolved, on a view of the whole subject, to wait no longer for his propositions, but to offer him on our part such terms as we were willing to close the business on, by treaty, if they were accepted, or without, if they were rejected. With this view, we observed to him that we were disposed to make him a new and more advantageous offer, in which we should go further than our instructions permitted, but which we should do to meet as far as we could the views of His Majesty, for the purpose of terminating the business amicably at once. He replied, that such a proposition on our part in the present stage would be premature, as the discussion was not concluded. We had long seen through Mr. Cevallos's views, and given him cause to know that, in following him in the discussion, we had done it not solely because he had invited us so to do, but from superior considerations which justified us in that conduct; not solely because we were the dupes of his management, but that we really wished to furnish an incontrovertible proof of the sincere desire of our Government to preserve the relations of friendship with Spain, and of the steadiness and magnanimity with which it pursued that object, while the pursuit could be attributed to such generous motives. As this trait in Mr. Cevallos's conduct corresponded with the others, we were not at all surprised by it, nor would we be diverted from the course which we had resolved on. We, therefore, wrote him, on the 12th, a note, in which we made him the propositions above-mentioned, in terms of perfect respect, and to which we asked his explicit answer. On the 16th we received one which was perfectly so. This answer being of the character already stated, left no cause to doubt the part which it now remained for us to take. Accordingly, on the 18th, we informed him that his note of the 15th had ended the negotiation, on which it became our duty to report the result to our Government, and for Mr. Monroe to repair immediately to London, where his duty required his presence. As preparatory to this latter measure, we requested an audience of their Majesties, to enable him to take leave of them in the usual form, and a passport to leave the country; both of which were granted in the course of a few days.

As the above details furnish some facts not to be found in the correspondence with the Minister of Spain, we have thought it our duty to give them. If any doubts existed on a view of the other documents, by any circumstance which occurred in the course of the negotiation relative to the policy of this Government in it, we are per-

sued that these will tend to remove them.—We do presume that the motive of this Government in seeking delay, by the management which it used, was its utter indisposition to accommodate the business with us on just principles. With such a determination, delay might be, on many considerations, desirable to it. Having the support of France on some important points, and knowing that an attempt was making by her to induce our Government to yield explicitly on them, it might wish to protract the business till that end was accomplished. Besides, it might hope to profit by the events of the present war. But, on our part, we did not see that any advantage could be gained by prolonging the negotiation, while we were persuaded that some essential injury might result from it. By prolonging, after so much time had already been consumed in it, we thought that we should have furnished the proof of timid councils; that we expected that our Government would yield to the pressure made on it, and thus tend to confirm this Government and that of France in increasing that pressure. While the negotiation was continued under existing circumstances, it seemed to us as if those Powers would have essentially the control of it. But, by withdrawing from it, we were persuaded that we should show the independence of our Government and country to the parties, and put the affair on its true ground in the eyes of other Powers, from which some advantage might result hereafter.

Of the terms on which this Government would have concluded a treaty with us, you will be able to form a tolerably correct opinion in some important points, by the documents which we send you. You will observe that it never furnished us with any propositions whatever, though often requested; that it refused to ratify the convention of August 11, 1802, but on conditions we were positively forbidden to accept; that it refused any accommodation on account of French spoliations, or the suppression of the deposit at New Orleans; disclaimed our right to West Florida, and asserted theirs, on the west of the Mississippi, to a line which should commence at the Gulf of Mexico, between the Caracut and Marmientao rivers, and run thence between the Adais and Natchitoches to the Red river, &c.

The propositions which we made were not only in the spirit, and in conformity to our instructions, but such as we thought, in every respect, just and reasonable. Our claim to the Rio Bravo appears to us to be as well founded as that of Spain to any portion of Mexico which is vacant, and we do conceive that the accommodation which we offered on that side of the Mississippi was worth at least that which was asked in return for it on the eastern side. The territory is more extensive, and it is at least as important to Spain to be accommodated on the side next Mexico as to the United States in respect to Florida; and the advantage of the parties is the standard by which the value ought to be estimated. Besides, we were convinced, if we succeeded at all, we were as likely to do it on these propositions as on

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any we could make at this time, short of the extravagant pretensions above stated. We are convinced, if we do succeed by other terms than those, that it will be owing to the successful course of events, and to the imposing attitude and decision of our Government and country. To have proposed other terms at this time would have produced no effect as to an adjustment, while it would have weakened our claims and injured us on any future occasion.

In proposing to accept a cession of West Florida from Spain, and to relinquish the French spoiliations, in the manner expressed in our note, we did it with a view to satisfy the pretensions of France in these respects. We deemed it advisable to take that ground, in the presumption that her Government might possibly avail itself of the opportunity thereby furnished to separate itself from the question, and eventually use its influence with Spain to adjust the business. You will observe that that proposition offered no relinquishment of those claims, but in case the whole project was accepted; in which case the United States were to pay on that account to the creditors a sum to be specified, for which they would have found in other respects a reasonable indemnity.

As we did not wish to compromise our Government more than was unavoidable, it was thought proper that Mr. Monroe should take leave of their Majesties in the usual form. In so doing, he avails himself of the opportunity to observe to His Majesty that the failure of the negotiation was attributable to his Government, and not that of the United States, for reasons which he took the liberty to mention. A copy of his address is enclosed. As nothing was said in my communication respecting the ordinary mission, it remains of course in force. At present it is our opinion that Mr. Pinckney should continue here, or leave some person charged with our affairs, should he find it inconvenient to remain till the orders of our Government are received on the subject. We are, however, strong in the persuasion that all our concerns depending with this Government, as well those of individuals as of the public, will remain suspended by it till our differences are adjusted.

The result of this negotiation forms an interesting crisis in our affairs, which it has been impossible to prevent, and to which the wisdom, firmness, and virtue of our Government will be fully equal. Having justice on its side, and having given the most ample proof of its moderation, there can be no doubt that its decision on the part now to be taken will be such as to sustain the high character of the American nation, vindicate its just rights, and merit the general approbation of our fellow-citizens.

We are, dear sir, with very great respect and esteem, very sincerely your very obedient servants,

CHAS. PINCKNEY.
JAMES MONROE.

Hon. JAMES MADISON,
Secretary of State.

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[Communicated to the Senate, October 25, 1803.]

In obedience to the directions of the act supplementary to the act, entitled "An act to establish the Treasury Department," the Secretary of the Treasury respectfully submits the following report and estimates:

The annual net proceeds of the duties on merchandise and tonnage, had, in former reports, been estimated at nine millions five hundred thousand dollars. That estimated revenue, predicated on the importations of the years immediately preceding the late European war, and on the ascertained ratio of increase of the population of the United States, appears, from the experience of the two last years, to have been underrated. The net revenue arising from that source, which accrued during the year 1802, exceeds ten millions one hundred thousand dollars. The revenue which has accrued during the two first quarters of the present year, appears, from the best estimate that can now be formed, to have been only fifty thousand dollars less than that of the two corresponding quarters of the year 1802; and the receipts in the Treasury, on account of the same duties, during the year ending the 30th September last, have exceeded ten millions six hundred thousand dollars. Those facts afford satisfactory evidence that the wealth of the United States increases in a still greater ratio than their population, and induce a belief that this branch of the public revenue may now be safely calculated at ten millions of dollars.

From the statement A, it will appear that the same revenue, for the two last years of the late European war, (1800 and 1801) calculated at the present rate of duties, averaged \$11,600,000 a year; but, although it might, with some degree of probability, be supposed that the renewal of hostilities will again produce a similar increase, no inference from that period is drawn in this report, in relation to the revenue of the ensuing years.

The statement B shows the several species of merchandise on which the duties on importations were collected, during the year 1802, the portion of that revenue which was derived from drawbacks, and that which arose from the extra duty on merchandise imported in foreign vessels.

Although the sales of the public lands, during the year ending on the 30th day of September last, were affected by the situation of the Western country, two hundred thousand acres have been sold during that period; and, as it appears by the statement C, that, independent of future sales, the sums already paid to the receivers, together with those which, exclusively of interest, fall due during the three ensuing years, amount to \$1,250,000; the annual revenue arising from the proceeds of those sales, cannot be estimated at less than four hundred thousand dollars.

The permanent annual expenses of Government, which, under existing laws, must be defrayed out of that revenue, amount to nine millions eight hundred thousand dollars, to wit:

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1st. The annual appropriation of \$7,300,000, for the payment of the principal and interest of the debt; of which about three millions and a half are at present applicable to the discharge of the principal, and the residue to the payment of interest - - - - \$7,300,000

2d. The current expenses of Government, which, according to the estimates for the year 1804, consist of the following items, viz:

For the civil department, and all domestic expenses of a civil nature - - - 791,000

For expenses attending the intercourse with foreign nations, including the permanent appropriation for Algiers, and all other expenses relative to the Barbary Powers - - - 184,000

For the Military and Indian departments - - - 875,000

For the Naval Establishment, calculated on the supposition that two frigates and four smaller vessels shall be kept in commission - - 650,000

2,500,000

9,800,000

And deducted from the permanent revenue of - - - 10,400,000

Leaves a surplus revenue of six hundred thousand dollars, applicable to other objects - - - \$600,000

The following extraordinary resources and demands, not being of a permanent nature, are not included in the above calculation, to wit:

The specie in the Treasury, which, on the 30th day of September last, amounted to \$5,860,000

The arrears of the direct tax, estimated at - - - 250,000

The outstanding internal duties, which amount to near - - - 400,000

And the sum which will be repaid to the United States on account of advances heretofore made in England, for the prosecution of claims, estimated at - - - 150,000

\$6,660,000

Constituting an aggregate of more than six millions six hundred thousand dollars, which, after reserving the sum which it is necessary to keep in the Treasury, will be sufficient to discharge the demands due on account of the convention with Great Britain, and amounting to 2,664,000

Sundry extraordinary expenses in relation to the conventions with France and Great Britain, estimated at - 100,000

The loan obtained from the State of Maryland for the City of Washington, amounting to - - - 200,000

And also to pay two millions of dollars on account of the purchase of Louisiana, being the same sum which was reserved for the purposes contemplated by the law of the last session, appropriating that amount for the extraordinary expenses attending the intercourse with foreign nations 2,000,000

4,964,000

It appears by the estimate D, that, during the year ending on the 30th September last, the payments from the Treasury, on account of the public debt, have amounted to 3,096,700

Which, together with the increase of specie in the Treasury, during the same period, amounting to - - 1,320,000

Making an actual difference in favor of the United States during that year of 4,416,700

The payments on account of the principal of the public debt, from the 1st day of April, 1801, to the 30th day of September, 1803, have amounted, as appears by the estimate E, to \$9,924,004

The specie in the Treasury, on the 1st day of April, 1801, amounted to - - - 1,794,000

And on the 30th day of September, 1803, to - - 5,860,000

Making an increase of - - - 4,066,000

These two items constitute an aggregate of - - - 13,990,004

From which, deducting the extraordinary resource arising from the sales of the bank shares, which produced 1,287,600

Leaving, for the amount of the true difference in favor of the United States for the period of two years and a half, the sum of - - - 12,702,404

From this view of the present situation of the financial concerns of the United States, it seems that the only question which requires consideration, is, whether any additional revenues are wanted in order to provide for the new debt, which, if Congress shall pass the laws necessary to carry the treaty with France into effect, will result from the purchase of Louisiana.

The sum which the United States may have to pay by virtue of that treaty, amounts to fifteen millions of dollars, and consists of two items: first, \$11,250,000, payable to the Government of France, or to its assignees, in a stock bearing an interest of six per cent., payable in Europe, and the principal of which will be discharged at the Treasury of the United States, in four instalments, the first of which shall commence in the year 1818; secondly, a sum which cannot exceed, but may fall short of \$3,750,000, payable in specie at the Treasury of the United States, during the course of the ensuing year, to American citi-

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zens having claims of a certain description on the Government of France.

It has already been stated that two millions of dollars may be paid from the specie now in the Treasury, on account of the last item; and the whole amount of the new debt which may eventually be created, cannot therefore exceed thirteen millions of dollars, the annual interest of which is equal to \$780,000; but, on account of commissions and variations of exchange, will be estimated at eight hundred thousand dollars.

The existing surplus revenue of the United States will, as has been stated, be sufficient to discharge six hundred thousand dollars of that sum; and it is expected that the net revenue collected at New Orleans will be equal to the remaining two hundred thousand dollars. That opinion rests on the supposition that Congress shall place that port on the same footing as those of the United States, so that the same duties shall be collected there, on the importation of foreign merchandise, as are now, by law, levied in the United States, and that no duties shall be collected, either on the exportation of produce or merchandise, from New Orleans to any other place, nor on any articles imported into the United States from the ceded territories, or into those territories from the United States.

The statements F, G, H, exhibit the annual exports of the United States, to and from Florida and Louisiana, for the year 1799 to 1802; and the statement G particularly shows, that the exportations from the Atlantic States to those colonies, of articles, not of the growth, produce, or manufacture, of the United States, amounted, for the three years, 1799, 1800, and 1801, to 6,622,189 dollars, making, an average of more than two millions two hundred thousand dollars of foreign articles liable to pay duty, annually imported into Florida and Louisiana from the United States alone.

It is ascertained that the exportations from the United States to Florida are so trifling that that statement may be considered as applying solely to New Orleans; and it is also known, that almost the whole of those importations were consumed within that colony; and that, during the war, the supplies from the United States constituted by far the greater part of its imports.

From thence it results, that the annual importations into the ceded territory, of articles destined for the consumption of its own inhabitants, and which will, under the revenue laws of the United States, be liable to pay duty, may safely be estimated at two millions five hundred thousand dollars; an amount which, at the present rate of duties, will yield a revenue of about \$350,000.

From that revenue must be deducted \$150,000, for the following items, viz:

1st. The amount of duties on a quantity of sugar and indigo, equal to that which shall be imported from New Orleans to the United States. The whole amount of sugar exported from New Orleans is less than 4,000,000 of pounds, and that of indigo is stated at about 30,000 pounds. Supposing (which, on account of that exemption, is

not improbable) that the whole of those articles should, hereafter, be exported to the United States, the loss to the revenue will be about \$100,000.

2d. No increase of expense in the military establishment of the United States is contemplated on account of the acquisition of territory; but the expenses of the civil administration of the province, and those incident to the intercourse with the Indians, are estimated at \$50,000: leaving for the net revenue derived from the province, and applicable to the payment of the interest of the new debt, \$200,000, as above stated. The only provisions, which, if that view of the subject be correct, appear necessary, and are respectfully submitted are, 1st, in relation to the stock of \$11,250,000, to be created in favor of the Government of France, or of its assignees.

That that debt be made a charge on the Sinking Fund, directing the Commissioners of the Fund to apply so much of its proceeds as may be necessary for the payment of interest, and reimbursement or redemption of the principal, in the same manner as, by the existing laws, they are directed to do in relation to the payment of interest and discharge of the principal of the debt now charged on that fund.

That so much of the duties on merchandise and tonnage as will be equal to seven hundred thousand dollars, being the sum wanted to pay the interest of that new stock, be added to the annual permanent appropriation for the Sinking Fund, together with the existing appropriation, eight millions of dollars, annually applicable to the payment of the interest and principal of the public debt.

And that the said annual sum of eight millions of dollars remain thus pledged, and be vested in the Commissioners of the Sinking Fund, in trust for the said payments, until the whole of the existing debt of the United States and of the new stock shall have been reimbursed or redeemed.

As a sum, equal to the interest accruing on the new stock, will thus be added to the Sinking Fund, the operation of the fund, as it relates to the extinguishment of the existing debt, will remain precisely on the same footing as has been heretofore provided by Congress. The new debt will neither impede or retard the payment of the principal of the old debt; and the fund will be sufficient, besides paying the interest on both, to discharge the old debt before the year 1818, and that of the new within one year and a half after that year.

2d. In relation to the American claims, the payment of which is assumed by the convention with France.

That a sum not exceeding \$3,750,000, inclusive of the two millions appropriated by a law of the last session of Congress, for defraying the extraordinary expenses incident to the intercourse with foreign nations, be appropriated for the payment of those claims, to be paid out of any moneys in the Treasury not otherwise appropriated.

That, for the purpose of effecting the whole of that payment, the President of the United States be authorized to borrow a sum not exceeding

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\$1,750,000, at an interest not exceeding six per cent. a year.

And that so much of the proceeds of the duties on merchandise and tonnage, as may be necessary, be appropriated for the payment of the interest, and for the reimbursement of the principal of the loan, which may, eventually, be effected by virtue of the preceding provision.

It is not proposed to charge that loan on the Sinking Fund, because its amount, in case it shall be effected, cannot, at present, be ascertained; and because it may, perhaps, under the then existing circumstances of the Treasury, be found more expedient not to borrow the money, and, in lieu of it, to pay out of the Sinking Fund the whole, or a part of the two last instalments, payable by virtue of the convention with Great Britain, as authorized by the act making provision for the payment of the whole of the public debt.

It is evident that the possibility of thus providing for the payment of the interest of a new debt of thirteen millions of dollars, without either recurring to new taxes, or interfering with the provisions heretofore made for the payment of the existing debt, depends on the correctness of the estimate of the public revenue which has been submitted.

Although it is not without diffidence that the hope of such favorable result is entertained, some reliance is placed on the solidity of the basis on which the estimate is grounded. It rests, principally, on the expectation that the revenue of the ensuing year shall not be less than that which accrued during the year 1802. No part of it depends on the probable increase which may result from the neutrality of the United States during the continuance of the war in Europe, nor even on the progressive augmentation, which, from past experience, may naturally be expected to arise from the gradual increase of population and wealth. Nor has that effect been taken in consideration, which the uninterrupted free navigation of the Mississippi, and the acquisition of New Orleans, may have, either on the sales of the public lands, or on the general resources of the inhabitants of the Western States.

All which is respectfully submitted.

ALBERT GALLATIN,

Secretary of the Treasury.

[The tables are omitted.]

ENCOURAGEMENT TO MANUFACTURES.

[Communicated to the House, Dec. 9, 1803.]

To the Honorable the Senate and House of Representatives of the United States, the memorial of the subscribers, artisans and manufacturers of Philadelphia, respectfully sheweth:

That in every country there is an inseparable connexion betwixt the manufacturing and the duties on foreign merchandise, inasmuch, that some of the greatest statesmen have made the imposts a political engine, to be used for the introduction or protection of the arts: for, as Rousseau

observes, in his "Political Economy:" "It belongs only to the real statesman to elevate his views, in the imposition of taxes, above the mere object of the finances, and to transform those burdens into useful regulations."

After the peace, and during the Confederation, the confusion that reigned in that branch of finance, by every State having different objects in view, rendered the manufacturing interest, at that time, precarious and uncertain. Since the adoption of the Constitution, and that the imposts have been transferred to the Federal Government, it is to the wisdom of Congress alone that your memorialists have to look up for protection.

It is with deep concern, however, that your memorialists have to represent, that during the long period from the peace which terminated our Revolutionary war to the present time, they have seen the wealth of the nation sent to foreign countries to purchase a thousand articles which can be as well manufactured at home, and of which nature has abundantly supplied us with the raw materials.

Among that immense number of articles, even of the first necessity, manufactured for the United States by foreign nations, there are very few that could not be produced by our own citizens, upon equal terms, if they were not prevented by some of the following reasons: 1st. Foreign fashion; 2d. Our markets being constantly overstocked with foreign goods; 3d. The unjust competition which we are obliged to sustain with foreign manufacturers; 4th. The expense necessarily attending the commencement of complicated manufactories; and, 5thly. Duties injudiciously laid on raw materials, or goods partially manufactured. On each of these your memorialists beg leave to state what has come within their own observation. And,

1. The articles that are affected by foreign fashion are principally clothing, and more especially fabrics of cotton. Our manufacturers of that article, in the trials that have already been made, find it impossible to keep pace with the changes introduced by the new patterns from foreign nations: they are therefore confined to those articles which bear very little profit, for which low wages are given, and have continually the mortification of seeing themselves excluded from the most profitable branches of the trade, and their goods rejected by the citizens of America as unfashionable.

2. Our stores being constantly glutted with foreign goods, is another very great obstruction to an incipient or even an established manufacture. The greater part of the manufactures, of which iron, silk, wool, cotton, or flax, are the raw materials, ought to be established in the interior of the country, where provisions, house-rent, and fuel, are cheap. It is therefore necessary that there should be a middle man betwixt the consumer and the manufacturer, that the latter may not waste his time in seeking for customers: these are the storekeepers, wholesale or retail, who inhabit the towns and seaports. Now it is evident that if a foreign manufacturer shall be permitted to keep these people with a constant supply of goods, and give them long credit, it will be impossible for the citizen with a small capital to persuade the store-

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keeper to purchase his goods for ready money; and if he applies immediately to the consumer, the time that he wastes, in a country where the population is diffused, forces him to demand an extraordinary price, or fix himself in a large town, where house-rent, fuel, &c., eat up the profits of his labor.

3. The competition that the manufacturing citizens of the United States are, by the laws of the country, obliged to sustain with the manufacturers of a foreign nation, is, in the opinion of your memorialists, unjust, inasmuch as the finished articles of our infant manufactures, produced from raw materials found in the United States, such as works of copper, iron, lead, earth, cotton, glass, wool, wood, fur, bone, horn, and leather, are generally, either prohibited in foreign countries, or duties imposed far greater than is paid on the like goods coming into the United States; so that there is no encouragement to attempt to excel foreign manufactures; for, in spite of the greatest exertions, still the consumption must be confined to the United States. If any difference were to be made betwixt two competitors, it ought to be in favor, of the weakest; and an infant manufacture must have some protection, to enable it to contend with an old establishment. Your memorialists are however, under the painful necessity of stating, that, in the United States, the reverse of this takes place.

In several instances, especially in hats, shoes, paper, and saddlery, manufactures which have arrived to as high perfection as in any country, in spite of foreign competition; they are however, not permitted into the country of our competitors, while theirs are still admitted here, and gain sometimes a temporary advantage over our manufacturers, which they are not able to recover for many years, owing to a fluctuation in the price of manual labor, or of the raw material, or the necessities of life. But to whatever state of perfection our manufactures may arrive, and however low we may be enabled to sell them, we never can contend with our competitors in their own markets, or put them to temporary inconvenience, because they totally prohibit us from their markets. And in those manufactures which require great capitals, and a combination of talents, our competitors in foreign countries have us altogether at their mercy: or rather, the word competitor is a perversion of the term: for, wherever one party is laid prostrate at the feet of the other, there is an end to competition.

4. The next obstacle is the expense necessarily attending the commencement of complicated manufactures. Where an article must pass through the hands of several ingenious artists, before it is fit for the market, the expense of collecting those artists must be considerable. The time, too, that is taken up to bring the materials from a raw state, to be fit for sale, must require an additional capital, which no man would risk, unless the consumption of his fellow-citizens was secured to him, and, at the same time, defended from every species of competition, but what he can see, and whose strength he can measure, viz: with his

fellow-citizens only. If an insidious foe is likely to come upon him in the dark, and in the guise of fashion, it would be the extreme of folly to venture his capital.

5. Your memorialists conceive, that the injudicious imposition of duties on raw materials, or goods partially manufactured, and in some cases a freedom from duty, equally injurious to the arts, merit the attention of Congress. Among the first, may be reckoned, rags for making paper, the bark of the cork tree, &c., and among the latter, wire of all kinds, as being an article for which the United States ought not to depend on a foreign country, especially as iron of the best kind is found here in abundance.

It is a position, that will not be denied by the greatest enemies to domestic manufacturing, that, as soon as any particular branch shall be established, foreign goods of the same kind ought to be prohibited or discouraged; and this is certainly the case with every manufactory of leather and fur; and yet your memorialists would be glad to know by what mode of reasoning it can be made to appear, that the hatter and shoemaker, who have spent their youth in acquiring those arts, should, every five or six years, be ruined by an excessive importation of foreign hats or shoes, which perhaps may be the remaining estate of some European bankrupt?

The enemies to the manufacturing system have, at different times, brought forward objections, which, to men fully acquainted with that branch of industry, hardly deserve notice; but, as there are others, with the best intentions, who are true friends to the prosperity of these States, who may be led away by these specious objections, or rather imaginary obstacles, we shall mention them, not with any intention of entering into a serious refutation, but only to show their insignificance. 1st. They say "this country is too young to begin the manufacture of clothing for the citizens." In the progress of every original country, (colonies excepted) the manufacture of clothing has always preceded everything else, even agriculture itself. But your memorialists cannot help expressing their opinion, that agriculture and the manufacturing arts ought neither to precede or be behind each other; that they were destined for mutual protection and support; of which the history and present state of all nations bear ample testimony. The flourishing state of agriculture must always be in proportion to the population; and population, on any given territory, is in proportion to the manufacturing arts, or the kind of labor in which the people are employed. Already, in some parts of the New England States, emigration is necessary to carry off the superabundant population; and it would be an injustice done to the landholders of that part of the Union, if they were prevented from pursuing that line of industry, which, by preserving the population to the State, would enhance the value of their property. And we have no hesitation in saying, that it will be bad policy indeed, when the United States shall retard the prosperity of the most ancient and most populous States, for no other reason than that the

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new States are not equally forward in point of population, agriculture, &c. There is no fact better authenticated than this, that several of the States have, from a multiplicity of causes, far outstripped others in the progress towards that state of society in which all the three great branches of national industry are combined, viz.: agriculture, manufactures, and commerce; and it is equally true, that not one of them, have been permitted to exert the force of their faculties, or call forth the industry of their citizens, but have been uniformly retarded and checked in their career, by United States' policy, and its fiscal regulations. In the great towns, we see all the evils attendant on luxury—such as pride, idleness, and dissipation, without any of the benefits and advantages, which, by political writers, have been ascribed to it: as, that it makes the rich contribute to the ingenious poor; calls forth talents and circulates the wealth of a nation. But no such good can attend luxury in America: instead of circulating the wealth of the nation, it transfers it to foreign Powers, and gives them the sinews of war, only to menace our peace and disturb our tranquillity.

It has been also objected to manufactures, that "they would retard or prevent the population of the Western wilderness"—as if the prosperity of the citizens, in old established situations, were to be sacrificed to new projects and land speculators. Every migration must be a loss, and not a gain, to the American nation at large. What the Western States gain the Eastern lose, and so far there is a balance. And the real loss is in the act of migration—the trouble, the change of climate, and a thousand other inconveniences, which, in a national scale, must be a loss.

The health of the citizens has been considered to be in danger by the sedentary life of manufacturers; but your memorialists know of no manufactory which can be called a sedentary employment, except the clerks necessary to keep the accounts; and, as far as it regards them, the objection will apply to merchants as well as to manufacturers. It is true, in foreign countries, where the Government, the law, and the employer, are all in combination, or rather conspiracy, against the employed, poverty and its concomitant, disease, must be very frequent among the people employed, not only in manufactories, but among the peasantry or cultivators of the ground. And to whatever deplorable condition artisans may be reduced, in these Governments, the cultivators of the soil are still worse; for to every other species of misery, ignorance must also be added.

Objections have been also made to arts and manufactories, on account of the supposed vice which is said to be found in manufacturing towns. A considerable number of your memorialists have seen the manufacturing towns of Europe, and are convinced that the greatest portion of virtue is to be found there, and that ten times the number of crimes are committed near courts and in seaports that are committed in manufacturing towns. In a word, (if we may judge from the state of society in Europe,) artisans and manufacturers, oppressed as they are, are nevertheless the most vir-

tuous and the most intelligent class in civil society. In a letter from Mr. Colquhoun of London to Mr. Eddy of New York, author of the treatise on the prisons of that city, we find the following observations: "From the facts you have disclosed relative to the criminal offences committed in the city of New York, I am induced to enlarge upon this subject. They appear to me to be of a magnitude to excite a considerable degree of alarm with respect to the degree of criminality in the American towns, inasmuch as it would appear that they greatly exceed the larcenies and misdemeanors committed in towns in Great Britain, of an equal or even a greater population. And (although I have not had an opportunity of ascertaining the fact) I have an impression on my mind that the annual convictions in the whole of Scotland, where population approaches two millions of people, are short of those which take place yearly in the State of New York."

The last objection that we shall notice, is "that Government ought not to grant any special privilege or protection to any part or portion of the national industry, more than to another; and if any manufactory will not take root of itself, it shows it is not fit for our climate or state of society, and ought not to be cultivated here." To which your memorialists beg leave to answer, that this objection can only hold good in the case of a simple manufactory, which is begun and finished by the ingenuity of one man, and where the market for the ready sale of the article is at hand, and does not require the interposition of the merchant to dispose of it, at a distance from the manufactory; but, in all complicated arts, where a combination of skill, and a combination of capital, too, is absolutely necessary, it will be found, that this never has, and we presume never will be, obtained, but by the fostering care of Government. And, if we inquire what other nations have done in similar circumstances, we shall find, that those who have given the greatest encouragement to the complex manufactories, have been the most successful, the most wealthy, and powerful; and, although the English Government has always been unwilling to let her artisans know that it was to them she owed her greatness, and has insidiously ascribed it to her navy, to her commerce, to her insular situation, to her soil, to her climate, to the constitution of her Government, and a number of other secondary or auxiliary causes, your memorialists are convinced that she is indebted for her greatness and power to the well directed industry of her artisans and manufacturers; and your memorialists, it is hoped, will not be blamed for trespassing on the time of your honorable body, by showing what that nation has done for her manufactories.

By the statute 3 Ed. IV. c. 4, no merchant or other person shall bring into the kingdom, to be sold within the realm, any of the following goods, viz. woollen cloths, laces, ribbons, silk in any wise embroidered, saddles, stirrups, harness, things wrought of tawed leather, shoes, hats; locks of any kind, &c. &c., upon pain to forfeit the same as often as they may be found in the hands of any

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person, to be sold, half to the King and half to the seizer. This statute was confirmed by 19 Hen. VII. c. 21. And, upon consideration that white ashes, made within the realm, are very necessary, for the making of soap and saltpetre, and for whitening of linen cloth, and scouring of woollen, &c. therefore, it is enacted that no person shall ship, or carry beyond sea, any white ashes, on pain of forfeiting six shillings and eight pence for every bushel: 3 Ed. VI. c. 26. And to preserve the wool—rams, lambs, or sheep, alive, are prohibited, to be carried out of the realm, upon pain that every offender shall, for the first offence, lose all his goods, and also suffer one year's imprisonment, and have his left hand cut off: 8 Eliz. c. 3. And the statute 12 Char II. c. 32, ordains that no person shall export any sheep, or wool, yarn made of wool, wool flocks, or fuller's earth, on pain of forfeiture, &c. And, for the protection of manufactures of leather, it is enacted by the 13 and 14 Char. II. c. 7, that no person shall carry out of England, the skins or hides, tanned or untanned, of any ox, steer, bull, cow, or calf, under a penalty of 500 pounds. And the statutes 13 and 14 Char. II. c. 19, prohibits the importation of card wire, or iron wire employed in making wool cards; that no part of their woollen manufactory might depend upon foreign nations. And for encouraging the manufactories of the kingdom, it is enacted, by the statute 11 and 12 Wm. III. c. 10, that all wrought silks, Bengals, and stuffs, of the manufacture of Persia, China, or the East Indies, and all printed, stained, and dyed calicoes, which shall be imported, shall not be worn in the kingdom; but shall be entered and carried to warehouses appointed by the commissioners of the customs, in order for exportation, and not taken thence, but on security given that they shall be exported. It was by such protecting statutes, and a multitude of others, that England created her extensive manufactories, which multiplied the objects of commerce, and laid the foundation of that Navy, which, at this day, gives laws to the maritime world. And an English author, who wrote upon the trade of that nation forty years ago, says, "What is of the utmost consequence to England, is, that, by laying high duties, we are always able to check the vanity of our people, in their extreme fondness for wearing exotic manufactures: for, if it were not for this restraint, as our neighbors give much less wages to their workmen than we do, and, consequently, can sell cheaper, the Italians, the French, and the Dutch, would have continued to pour upon us their silks, paper, hats, druggets stuffs, and even Spanish woollen cloths; for they have the wool of that country as cheap as we, and are become masters of that business, by the great encouragement they have given to able workmen from other countries to settle with them; and, thereby, have prevented the growth of those manufactories amongst us, and so might have reduced us to the low estate we were in before their establishment; and, therefore, it will be a maxim, to be observed by all prudent Governments, who are capable of manufacturing within themselves, to lay such duties on the foreign as may favor

their own, and discourage the importation of any of the like sorts from abroad."

If other nations, as Spain, Portugal, Naples, &c., have neglected their manufactories, and, consequently, hold only a second or third rank among the nations of Europe, it would ill become the United States to follow their example. In this particular we should rather imitate England or France, without, however, making the source of riches a rod of oppression, as they have done; and, notwithstanding artisans are greatly oppressed there, whatever of republicanism is to be found in their constitutions, is to be ascribed to them; for in all ages the peasantry have been too ignorant to understand their rights, and too remote from each other to be able to withstand oppression.

It is, however, conceded by some, "that coarse goods, and articles of the first necessity, ought to be manufactured here, while fine goods, and articles of luxury, ought to be imported from abroad;" which is much the same as to say, that foreign manufacturers ought to be employed in the most beneficial branches of our consumption, and the citizens should be contented with the inferior kinds of labor.

If this be not the meaning of our opponents, then it must be inferred, either that our citizens want genius to perform the finer arts, or that they are despised in the United States. It is a fact, however, of perfect notoriety, that there are more fine goods of every manufacture used in the towns of America, than in those of the same size in Europe; and also, that our citizens do not want talents to execute, or genius to contrive, anything that may be required of them, and for which they shall have due encouragement. Among the members even of this society, if we except chinaware, it would be almost impossible to mention an article in use here that could not be made by one or other of them. It is true, that many of them are employed out of their proper line of business, and in occupations far beneath their genius or talents. Your memorialists cannot, therefore, be blamed for their opinion, that it would be more profitable to the nation to employ these people in teaching the rising generation those arts, than to continue purchasing foreign goods; and also, that the best and most profitable parts of the labor ought to be given to the citizens, and the coarse or inferior branches reserved for foreign nations.

But it has been said that high duties ought not to be laid, because we have not at present a sufficient number of hands to supply the United States. This only shows the necessity of protecting duties, which alone can give encouragement to men of genius to pursue complex and difficult manufactures; and that no length of time would ever produce a sufficient number of hands without it.

Having answered, as briefly as possible, some of the objections of our opponents, and shown what another great nation did for the arts, during their infancy, in that country, your memorialists beg leave to state some of the effects likely to be

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produced from an union of the three great branches of national industry—agriculture, manufactures, and commerce; in which it will be seen, that each of them would receive an additional impulse by such an union. And first, of agriculture.

It has been already observed that the state of agriculture is always in proportion to population. This is evident from a view of the price of land, which decreases in the compound ratio of its intrinsic worth, and its distance from the centre of a town, or the populous part of a country. But agriculture alone will never concentrate the population so as to form a town of any considerable magnitude. There can only be a country village, where a few neighboring proprietors are collected, with the blacksmith, tavern-keeper, and store-keeper, &c., which, instead of being the centre of trade and industry, is oftener the focus of dissipation. This scattered population requires a greater extent of roads than can be kept in any decent repair; hence, during several months in the year, they are impassable; and at all seasons, the distance is too great to make it profitable to transport heavy commodities, the rude produce of agriculture, except along the banks of navigable waters.

But when the useful arts are established, in the midst of a fertile country, the system of farming becomes improved; land advances in value, because all the produce of a farm finds a ready market in the neighborhood, and good roads may be made without oppressive taxation. It is thus that agriculture has always flourished best, in the neighborhood of the arts; and commerce consisting in the exchange of the commodities of one district for those of another, the histories of all nations demonstrate that, where objects of interest are greatly diversified, the greater is the trade of the merchant. Manufactories might change the nature and objects of commerce; but, to annihilate it, would be contrary to the experience of all mankind.

As the revenue of the United States is derived principally from the objects of foreign industry, it will be proper to inquire what would be the effects of the manufacturing system on that revenue. We will suppose that, with all the protection that would be given to manufactories, it would be, nevertheless, twenty years before the United States could supply themselves with everything they choose to make, or could arrive at that perfection, so as to equal foreign nations; and if the revenue on goods imported were divided into two parts, viz: 1st. That which arises from the useful arts, (which it would be proper for the United States to encourage here,) and, 2d. That which is levied on luxuries, such as tea, chinaware, &c., or other manufactures, which it, perhaps, would be imprudent, for a series of years, to attempt, it is highly probable, if not evident, that the increasing population of the United States would, in twenty years, double the produce of the revenue arising from the importation of those luxuries, and make the revenue from that part alone, equal to the whole of the

present revenue. On the other hand, a heavy protecting duty on the useful arts would make a very considerable addition to the revenue for a few years, which would, however, be gradually diminishing, as manufactories were established throughout the country. This argument is predicated upon the stationary quality which the expenses of the Federal Government possesses, and on the nature of its revenue, increasing in proportion to the population.

Nothing can be a more appropriate object of taxation than foreign fashions and foreign luxuries. When foreign luxuries shall have become more expensive, the citizens will be contented with more decent attire, and learn to place a higher value on the plain fabrics of home manufacture. In a few years, the genius of Americans will be called forth to invent luxuries of our own, which are as beneficial to a country as foreign luxuries are injurious.

Thus, by one operation, many advantages will accrue to the nation. New sources will be laid open for the employment of capital in the interior; the coasting trade and internal commerce will receive a new impulse; domestic industry will put to shame idleness and dissipation; foreign nations will lose their influence over our councils. The fertile lands of America will rise to their just value, by bringing a market to the door of the farmer. The riches with which nature has so bountifully blessed this country, will be explored and brought into use, and the minerals and waters of the country will be employed to the purposes for which they were designed by the God of nature.

Your memorialists now beg leave to state, in a general way, what alterations it would be necessary, in our opinion, to make on the duties on importation, so as to protect some of the most useful arts already established, and to encourage the introduction of others; and this we do, neither in the servile language of petition, nor with the presumption of dictating to the wisdom of Congress.

And 1st. It is our opinion that all manufactures of which wood, fur, leather, horn, bone, or rags, are the raw materials, as they are the produce of the country, ought either to be prohibited, or high duties laid on their importation. Goods manufactured from these materials are either already made here, or may be made as soon as the artisans are secured in their respective pursuits.

The manufactures also, of which hemp, flax, cotton, and iron, are the raw materials, as they require great capital, a great diversity of skill and talents, and have, for the most part, had a beginning here, ought to receive all the fostering care of Government; that we should not, in these expensive undertakings, have to contend with foreign goods in our own market.

Whenever Congress shall seriously take up the subject of manufactures, a great number of articles will come under consideration, which are neither properly raw materials, in the strict sense of the word, nor finished goods; such, for example, are iron and brass wire, sheet brass, sheet

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copper, printing ink, types, &c., all of which are, however, necessary to the completion of other manufactures. These, it is believed, might, some of them, be encouraged by premiums from the States; for it is known that, if once they are fairly set up, and the first expense got over, a very moderate duty would prevent foreign nations from rivalling us.

Manufactories of the precious metals have already been established; but it is questionable whether they will preserve their reputation without being assayed and stamped, as is practised in other nations, and whether this be within the jurisdiction of Congress.

No nation can be called independent which relies for military or naval stores on a foreign country, and there can be no certainty of a supply, in time of war, but by encouraging their manufacture in times of peace, by prohibiting all foreign arms and ammunition.

Every fabric of silk may, at present, be considered as a luxury, and, therefore, the proper subject of taxation; which, at the same time, would operate greatly in favor of the Southern States, where silk, in a few years, might be as plenty as in China.

Your memorialists have forborne to say much on the manufacture of wool, as that article cannot be multiplied at pleasure, as cotton, hemp, and flax may. This would depend upon a combination of circumstances. The people must be induced to prefer mutton and lamb to the flesh of hogs; and this can only be done by an attention to the breed, and improvements in the mode of pasturing those useful animals—a subject which would come with more propriety from a society of agriculturists.

Having thus submitted our case to the wisdom of Congress, your memorialists must now wait, with anxiety, your decision; and, in whatever manner this great question shall be determined, we shall console ourselves with having brought it to an issue; for, after your determination, the citizens will be no longer in suspense as to the nature and object of their pursuits. The capitalist will be able to calculate in what line he ought to employ his capital. Parents will judge what occupation will be most profitable for their children. And foreign artists will see the propriety or impropriety of migrating hither—points which are not easily determined in the present state of things. All which is respectfully submitted, &c.

DRAWBACK.

[Communicated to the House, December 20, 1803.]

Mr. SAMUEL L. MITCHILL made the following report: The Committee of Commerce and Manufactures report such facts as have occurred to them, on a resolve of the House, of the 9th of November, directing them to report, by bill or otherwise, whether a drawback of duties ought not to be allowed on sugar refined in the United States,

and exported to foreign ports or places, together with their opinion on the same.

By "An act laying certain duties on snuff and refined sugar," a duty was laid and collected of two cents the pound, on sugar refined within the United States. By the fourteenth section of the same act, this duty was allowed to be drawback on exportation, together with three cents a pound on account of the duties paid upon the importation of crude sugar. At the time of making this regulation, the duty on crude sugar was one cent and a half the pound. Upon the calculation that two pounds of crude sugar were required to make one pound of refined sugar, three cents of drawback were allowed on exporting the refined article, and to this were added the two cents paid to the excise: the sum of the duty and the excise, when added together, making the five cents of drawback at that time.

By the statute of March the third, one thousand seven hundred and ninety-seven, an additional duty of half a cent the pound was levied on brown sugar imported from foreign places; and by the fifth section of that act, there was allowed an additional drawback of one cent the pound on exported refined sugar, of domestic manufacture; observing the same rate of calculating two pounds of crude sugar for one of refined.

On the thirteenth day of May, one thousand eight hundred, Congress imposed a further duty of half a cent the pound on imported brown sugar, and increased the drawback, in consequence thereof, to one cent the pound on the importation of domestic refined sugar.

The whole amount of drawback, amounting thus to seven cents the pound, on the exportation of sugar refined in the United States, was done away by the statute repealing the internal taxes.

The committee find further, notwithstanding the repeal of the statutes, and of their parts which relate to the duties, excises, and drawbacks, provided for crude and refined sugars, that the refining of sugar at home is not wholly unprotected. It is known that sugar candy or crystallized sugar could be imported from Asia, not only so cheap as to vie with West India brown, but even to be substituted, in many cases, for refined sugars in the markets of the United States. The merchants who could have brought great quantities of this elegant form of sugar, were interrupted in their trade in this article, by the imposition in the statute of March 3, 1797, of the excessive duty of nine cents the pound, and by the statute of May 13th, 1800, an additional duty of two cents and one half per pound, making together eleven cents and one half the pound, and, of course, the almost entire prohibition of the importation. Thus, to protect the domestic refiners of sugar, the merchants who trade to the East Indies are prohibited from bringing sugar candy to the United States, and the citizens at home from consuming it, but at the enormous price paid for it, as a dainty, a medicine, or a rarity.

Sugar candy being thus excluded our market, and, of course, from competition, Congress made another provision for encouraging the domestic

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sugar refinery. They imposed, by the several acts of August 10, 1790, of June 7, 1794, and of January 29, 1795, various duties, amounting to nine cents, on the importation of foreign refined loaf sugar, and six and one half cents on all the other refined sugar. They refused, by the statute of June 5th, 1794, a drawback on the exportation of imported loaf and lump sugars of foreign refinery; they forbade the importation of it altogether in vessels of less burden than one hundred and twenty tons; and they, even then, prohibited the admission of it in parcels of smaller quantities than six hundred pounds. This amounts almost to the prohibition of foreign refined sugar; as a proof of which, it may be observed that, from one thousand seven hundred and ninety, to one thousand seven hundred and ninety-two, the quantity of imported loaf sugar consumed in the United States, was two hundred and eight thousand five hundred and forty pounds; from one thousand seven hundred and ninety-three, to one thousand seven hundred and ninety-eight, it was forty-one thousand three hundred and thirty-seven pounds. In one thousand seven hundred and ninety-nine, and one thousand eight hundred, it was eleven thousand seven hundred and eleven pounds; which, at the rate of nine cents per pound, produced, in the first period, eighteen thousand seven hundred and sixty-nine dollars of revenue: in the second period, only three thousand seven hundred and twenty dollars; and in the last, but one thousand and fifty-four dollars. From October the first, one thousand eight hundred, to the thirtieth of September, one thousand eight hundred and one, there were only sixteen thousand six hundred and twenty-eight pounds of loaf sugar imported; of which, twelve thousand seven hundred and fifteen pounds were in American, and three thousand nine hundred and thirteen pounds in foreign vessels.

Under this loss of revenue from the existing regulations concerning sugar, it is believed, by the persons engaged in the refining business, that, in the infantine state of this manufacture, it stands in need of greater encouragement.

It will be remembered that, already, sugar candy and loaf sugar, from abroad, are loaded with such heavy duties that their prohibition operates as a bounty on the domestic manufacture. It will be recollected, too, that the duties on the refined sugar consumed at home, are paid by the consumer; and that, to protect the refiners of sugar in the United States, Government have adopted measures that have considerably lessened the revenue on that article; and, by removing foreign competition, enhanced the price to the domestic consumer.

Still it is inquired whether the drawback ought not to be allowed on the exportation of refined sugars of our own manufacture?

There are two difficulties attending this, arising from the acquisition of Louisiana.

The first is, that already four thousand and five hundred casks of sugar, weighing half a ton each, estimated to be worth three hundred and two thousand and four hundred dollars, are prepared

and exported annually from New Orleans, and its vicinity. By annexing this territory to the United States, this quantity of sugar, or a ratable proportion of it, will come into the States, and probably be refined. It would be unreasonable to pay a drawback upon sugar which had never paid a duty. Under an improved cultivation, the country lying between the river Iberville and the city of New Orleans may be made additionally productive of sugar cane; it is supposed that a tract of ninety miles in length, and three quarters of a mile in breadth, on both sides of the Mississippi, will be turned into sugar plantations, and yield, annually, twenty-five thousand hogsheads of sugar, and twelve thousand puncheons of rum. This quantity, thrown into our market, may be contemplated as good stock for our refiners to work upon.

The second difficulty is, that a refinery of sugar has been, for some time, established at New Orleans, which is said to produce two hundred thousand pounds of loaf sugar annually. This branch of manufacture may be expected to increase there, as the quantity of sugar increases, and as capitalists and men of enterprise go into the business. By performing the operation of refining near the place where the sugar is raised, much of the expense of transportation will be saved, by carrying the wrought rather than the raw article to a distant or a foreign market. And to accomplish the object, which the refiners in the United States have in view, it would be necessary to prohibit the importation of refined sugar from Louisiana; and to avoid paying the amount of a drawback upon sugars that have never paid duties, it will be necessary for the economy of Government, and the security of the treasury, to distinguish those of Louisiana from others of foreign production.

It would appear, from this examination of facts, that sugar refining has been more favored by Government than, perhaps, any branch of domestic manufacture. The diminution of 17,735 dollars in the revenue, heretofore derived from imported loaf sugar, indicates the amount of a virtual bounty annually paid to encourage the business.

It may be questioned whether a drawback ought to be allowed on the exportation of domestic refined sugar, unless the duties were lessened on the importation of sugar candy and foreign refined sugar. While the prohibitory duties exist on the latter articles, the demand for Fredish [United States] refined sugar, in foreign markets, may raise the price of the article, so as sensibly to affect the consumer of refined sugar at home.

This rise of the price of refined sugar at home and abroad, will, of course, raise the price of brown or crude sugar in our home market; and by the competition between the refiners and the housekeepers, muscovado sugar itself must be paid for at a dearer rate by the citizens, at large, who consume it. Thus the trade will be in danger of being engrossed by the refiners, who, without paying any revenue to Government, raise the price of loaf, lump, and brown sugar, to the consumer.

A good reason does not occur to the committee, wherefore both the treasury of the nation, and the

Report of the Commissioners of the Sinking Fund.

pockets of the individual citizens, should be subjected to greater payments than at present, for promoting the refinery of sugar; and particularly, as the extension of the laws of the United States to Louisiana, presents this subject in an aspect different from any in which it has been viewed before.

The plain principle on which drawbacks are allowed, is that the *identical* article imported, shall be exported according to law. If they are granted upon articles that have undergone a remarkable chemical or mechanical alteration, then they ought to be allowed on all exported cordage formed from imported hemp, on exported rum, distilled from imported molasses, and on garments made at the slopshops, and otherwise from imported cloth, and afterwards carried abroad.

In the case of sugar, the committee is inclined to think, that the operation of refining has already been patronised to as great an extent by Government as is consistent with political economy and public good; and under that conviction, they submit to the House their opinion—

That it would be improper, at this time, and under existing laws and regulations, to allow a drawback upon the exportation of domestic refined sugar.

SINKING FUND.

[Communicated to the Senate, February 6, 1804.]

WASHINGTON, Feb. 4, 1804.

The Commissioners of the Sinking Fund respectfully report to Congress as follows: That the measures which have been authorized by the board, subsequent to their report, of the 5th February, 1803, so far as the same have been completed, are fully detailed in the report of the Secretary of the Treasury, to this board, dated the third day of the present month, and in the statements therein referred to; which are herewith transmitted, and prayed to be received as part of this report.

JOHN BROWN, *Pres't of Senate.*

J. MADISON, *Sec'y of State.*

A. GALLATIN, *Sec'y of Treasury.*

LEVI LINCOLN, *Att'y Gen. of U. S.*

The Secretary of the Treasury respectfully reports to the Commissioners of the Sinking Fund: That, at the close of the year 1801, the unexpended balance of the disbursements, made out of the Treasury, for the payment of the principal and interest of the public debt, which was applicable to payments falling due after that year, as ascertained by accounts rendered to the Treasury Department, (as will appear by statement A) amounted to - - - \$1,085,907 60

That, during the year 1802, the following disbursements were made out of the Treasury, on account of the principal and interest of the public debt, viz:

1. There was paid on account of the reimbursement and interest of the domestic funded debt, the sum of -	4,618,021 39
2. On account of domestic loans obtained from the Bank of the United States, viz:	
On account of the principal - - -	\$1,290,000 00
On account of interest - - -	162,025 00
	1,452,025 00
3. On account of the domestic unfunded debt, viz:	
On account of debts due to foreign officers, - - -	7,994 92
On account of certain parts of the domestic debt - - -	14,966 84
	22,961 76
4. On account of the principal and interest of the Dutch debt, including repayments in the Treasury - - -	3,359,992 03
Amounting altogether, to - - -	9,453,000 18
As will appear by the annexed list of warrants B.	
Which disbursements were made out of the following funds, viz:	
1. From the funds constituting the annual appropriation of \$7,300,000 00, for the year 1802, viz:	
From the fund arising from interest on the debt transferred to the Commissioners of the Sinking Fund, as per statement annexed to last year's report, marked B, - - -	326,449 92
From the fund arising from payments into the Treasury of debts which originated under the late Government, as per statement annexed to last year's report, marked C, - - -	888 79
From the fund arising from dividends on the capital stock, which belonged to the United States, in the bank of the said States, as per statement annexed to last year's report, marked D - - -	33,960 00
From the fund arising from the sale of public lands, being the amount of moneys paid into the Treasury, in the year 1802, as per statement annexed to last year's report, marked E - - -	179,575 52
From the proceeds of duties on goods, wares, and merchandise, imported, and on the tonnage of ships and vessels - - -	6,759,125 77
	7,300,000 00

Report of the Commissioners of the Sinking Fund.

2. From the proceeds of duties on goods, wares, and merchandise, imported, and on the tonnage of ships or vessels, advanced in part and on account of the annual appropriation of \$7,300,000, for the year 1803	745,807 40
3. From repayments in the Treasury, on account of remittances purchased for providing for the foreign debt, as will appear by the statement E, viz : Repayment of the purchase money - - - 109,120 Damages and interest recovered - - - 10,472 78	119,592 78
4. From the proceeds of two thousand two hundred and twenty shares of the capital stock of the Bank of the United States as per statement annexed to last year's report, marked F	1,287,600 00
	<u>\$9,453,000 18</u>

That of the above-mentioned disbursements, together with the above-mentioned balance, which remained unexpended on the 1st January, 1802, and, amounting altogether, to - - - \$10,538,907 78

Ten millions five hundred and thirty-eight thousand nine hundred and seven dollars and seventy-eight cents, have been accounted for in the following manner, viz :

1. There was repaid in the Treasury, during the year 1802, on account of protested bills or advances made for contracts, which were not fulfilled, as appears by the above-mentioned statement E, a sum of - - -	109,120 00
2. The sums actually paid during the same year, to the payment of the principal and interest of the public debt, as ascertained by accounts rendered to the Treasury Department, amount to seven millions seven hundred and seventy-two thousand eight hundred and fifty-four dollars and seventy cents, viz :	
1. Paid in reimbursement of the principal of the public debt - - -	3,638,744 63
2. On account of the interest and charges on the same - - -	4,134,110 07
	<u>7,772,854 70</u>

As will appear by the statement D.

3. The balance remaining unexpended at the close of the year 1802, and applicable to payments falling due after that year, as ascertained by accounts rendered to the Treasury Department, amounted to (as will appear by the statement F) - - -	2,656,933 08
	<u>10,538,907 78</u>

That, during the year 1803, the following disbursements were made out of the Treasury, on account of the principal and interest of the public debt, viz :

1. There was paid on account of the reimbursement and interest of the domestic funded debt, a sum of - - -	4,568,176 68
2. On account of domestic loans obtain-	

ed from the Bank of the United States, viz :	
On account of the principal - - -	500,000 00
On account of the interest - - -	82,000 00
	<u>582,000 00</u>
3. On account of the domestic unfunded debt, viz :	
On account of debts due to foreign officers - - -	12,123 31
On account of certain parts of the domestic debt - - -	12,073 43
	<u>24,196 74</u>
4. On account of the principal and interest of the foreign debt, including repayments in the Treasury - - -	2,153,348 17
Amounting altogether, to - - -	<u>7,327,721 59</u>

As will appear by the annexed list of warrants, G. Which disbursements were made out of the following funds, viz :

1. From the funds constituting the annual appropriation of \$7,300,000, for the year 1803, viz : From the fund arising from interest on the debt transferred to the Commissioners of the Sinking Fund, as per statement N - - -	401,355 05
From the fund arising from payments into the Treasury, of debts which originated under the late Government, as per statement O - - -	135 46
From the fund arising from the sales of public lands, being the amount of moneys paid into the Treasury, in the year 1803, as per statement P - - -	158,949 65
From the proceeds of duties on goods, wares, and merchandise, imported, and on the tonnage of ships or vessels - - -	5,993,752 44
Amounting altogether, to - - -	<u>6,554,192 60</u>
Which sum of - - -	6,554,192 60
Together with the sum advanced during the year 1802, on account of the appropriation for the year 1803, and amounting, as above stated, to - - -	<u>745,807 40</u>
Make, in the whole, for the year 1803, the annual appropriation of - - -	<u>7,300,000 00</u>

2. From the proceeds of duties on goods, wares, and merchandise, imported, and on the tonnage of ships or vessels, advanced in part, and on account of the annual appropriation for the year 1804 - - -	753,236 40
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Report of the Commissioners of the Sinking Fund.

3. From repayments in the Treasury on account of remittances purchased for providing for the foreign debt, and of advances made to Commissioners of loans, as will appear by the statement I, viz:

Repayment of the purchase money, and advances	13,117 48
Damages and interest recovered	2,218 00
	<u>15,335 48</u>

4. From the moneys appropriated by law, for paying commissions to agents employed in the purchase of remittances for the foreign debt, being the amount paid at the Treasury, during the year 1803, for that object, as will appear by statement G

	4,957 11
	<u>7,327,721 59</u>

That the above-mentioned disbursements, together with the stated balance of

	2,656,933 08
--	--------------

Which remained unexpended at the close of the year 1802, and with a further sum arising from profits made on remittances made to Holland, by the way of London, which is estimated at

	11,200 00
	<u>9,995,854 67</u>

And amounting altogether, to nine millions nine hundred and ninety-five thousand eight hundred and fifty-four dollars and sixty-seven cents, will be accounted for in the next annual report, in conformity with the accounts which shall then have been rendered to the Treasury Department.

That, in the meanwhile, the manner in which the said sum has been applied, is, from the partial accounts which have been rendered, and from the knowledge of the payments, intended to be made both in Holland and in America, estimated as follows, viz:

1. The repayments in the Treasury have amounted, as by the above-mentioned statement I, to

	13,117 48
--	-----------

2. The sums actually applied, during the year 1803, to the payment of the principal and interest of the public debt, are estimated as follows, viz:

Paid in reimbursement of the principal of the public debt

	4,528,196 74
--	--------------

Paid on account of interest and charges on the same

	3,903,144 11
--	--------------

Amounting, altogether, to

	8,431,340 85
--	--------------

As will appear by the estimate K.

3. The balance remaining unexpended at the close of the year 1803, and applicable to payments falling due after that year, is estimated, as per estimate L, at

	1,551,396 34
	<u>\$9,995,854 67</u>

That no purchases of the debt of the United States have been made since the date of the last report to Congress.

And that the statement M exhibits the opera-

tions at the Treasury, in the transfer of stock to the Commissioners of the Sinking Fund, in trust for the United States, upon the reimbursement of the foreign debt, in the year 1802; and includes, also, the sum of six thousand three hundred and fifty-nine dollars and twenty cents, being the aggregate of the several species of stock transferred in the year 1803, in payment for public lands.

All which is respectfully submitted.

ALBERT GALLATIN,

Secretary of the Treasury.

TREASURY DEPARTMENT, Feb. 3, 1804.

A.

Statement of the provision made before the 1st January, 1803, for the payment of the principal and interest of the public debt falling due after the year 1801.

I. On account of the foreign debt.

1. Cash in the hands of the commissioners at Amsterdam and Antwerp, on the 31st December, 1801:

Guilders. Dolls. Cts.

In Amsterdam, per treasury statements No. 13,824 & 14,359

	1,508 14 02(a)
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In Amsterdam, transferred by the commissioners during the year 1802, from the account of Gov. Morris to the credit of Dutch debt, being the balance of a sum formerly remitted for paying the interest on the debt due to foreign officers

	41,787 10 08
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	43,296 04 10
--	--------------

Deduct balance due to C. J. M. De Wolf, in Antwerp, -

	1,432 00 00
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	41,864 04 10
--	--------------

At 40 cents, is

	16,745 69
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2. Amount of remittances paid for at the treasury and remitted to the commissioners on or before the 21st December, 1801, which are credited by the commissioners in their account for 1802 \$2,240,523 04(b)

Which remittances cost only \$888,065 64, but, at 40 cents, is

	896,209 28
--	------------

3. Amount of payment, made at the treasury before the 31st December, 1801, for remittances which have been protested for non-payment, on account of contracts not fulfilled, and on that day not repaid into the treasury,

	153,120 00 (c)
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4. Advances made to G. Simpson and P. R. Dalton, agents for purchasing bills of exchange, unexpended on 31st December, 1801,

	20,961 40
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II. From which deduct, on account of the domestic debt, viz:

The balance on 31st December, 1801, in the hands of deceased commissioners of loans, is

	\$3,393 99
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State of the Finances.

Ditto in the hands of acting ditto - -	1,196,390 16
Overpaid to Bank of United States beyond the dividends payable at the Treasury - - -	95 88
	<u>1,999,880 03</u>
The demands unsatisfied on the same day, on that account, were, viz:	
Dividends payable by the Commissioners of Loans, including that due on 1st January, 1802, and exclusively of unclaimed dividends no longer demandable at their offices - - -	1,178,863 59
Unclaimed dividends payable at the Treasury - - -	22,126 59
Balance due to the late Commissioner of Loans for Georgia - - -	18 62
	<u>1,201,008 80</u>
Balance due on account of domestic debt - - - - -	1,128 77
	<u>1,085,907 60</u>
Amount advanced in anticipation of payments for the public debt - - -	

NOTES TO STATEMENT A.

(a) In the account of the Commissioners for the year 1801, as settled at the Treasury, per report 13,824, a balance is stated in favor of the United States, of guilders - - - - 57,631 16 15

In their account for the year 1802, as settled at the Treasury, per report No. 14,359, they are charged for transactions antecedent to 1802, with a further sum of - - - - 6,146 14 03

63,778 11 02

From which deducting an item for dividends on stock sold, only suspended for want of vouchers, and amounting to - - - - - 62,269 17 00

Leaves the balance, as per statement B 1,508 14 02

The Commissioners, in their account for 1801, had stated a balance due to them by the United States, of - 19,676 15 00

Making a difference of - - - 21,185 09 02

Which difference consists of the following items, viz:

Overcharge of one-half per cent. on their charges for negotiating the loan of 3,000,000 guilders, of 1st January, 1794—guilders - - - 15,000 00 00

Interest charged by them on said sum 2,679 09 00

Amount of a bill paid to them on account of the Dutch debt, and by them erroneously credited to the Department of State - - - 3,000 00 00

Interest on the said sum - - - 467 05 03

Commission overcharged on payment of interest on Dutch debt - - - 38 14 15

Guilders - - - - 21,185 09 02

(b) This sum, which makes part of the sum of 5,009,985 02 08 accounted for by the Commissioners during the year 1802, as per their account for that year, settled at the Treasury, (report No. 14,359,) consists of the following items, viz:

Guilders, - 814,364 00 at 39 cents,	\$317,601 96
1,426,159 04 at 40 " - -	571,463 68
	<u>2,240,523 04 cost - - 888,065 64</u>

(c) This sum consists of the following particulars: *Yet in suit.*

Bill purchased from Pragers & Co. in 1798, guilders 120,000	\$48,000
Ditto from A. Brown in 1801 60,000	24,000
<i>Repaid in 1802.</i>	
Ditto from D. Harris " 35,000	14,000
Ditto from J. Burrall " 10,000	4,000
Ditto do do " 8,000 at 39 cts.	3,120
Advance to J. and R. Waln, on account of a contract for paying moneys in Amsterdam, not fulfilled in 1801, - - - -	60,000
	<u>\$153,120</u>

JOSEPH NOURSE, *Register.*

TREASURY DEPARTMENT,
Register's Office, Feb. 1, 1804.

STATE OF THE FINANCES.

[Communicated to the Senate, November 21, 1804.]

In obedience to the directions of the act supplementary to the act, entitled "An act to establish the Treasury Department," the Secretary of the Treasury respectfully submits the following report and estimates:

Revenue.

The net revenue arising from duties on merchandise and tonnage, which accrued during the year 1802, and on which the estimates of last year were predicated, amounted, as will appear by the statement A, to \$10,154,000. The net revenue arising from the same source, which accrued during the year 1803, has amounted, as appears by the same statement, to \$11,306,000: and it is ascertained that the net revenue which accrued during the three first quarters of the year 1804, considerably exceeds that of the corresponding quarters of the year 1803. Without drawing any inference from the increase of the present year, an increase which must be ascribed to the situation of Europe, and will, eventually, be diminished by subsequent re-exportations, that branch of the revenue may, exclusively of the Mediterranean fund, be safely estimated at \$10,730,000, which is the average of the two years 1802 and 1803. The actual payments in the Treasury, on account of those duties, during the year ending on the 30th of September last, amount nearly to the same sum; and there is no reason to suppose that the receipts of the ensuing, will fall short of those of last year.

The statement B exhibits, in detail, the several species of merchandise, and other sources, from

State of the Finances.

which that revenue was collected, during the year 1803.

It also appears that the revenue arising from the sales of public lands is gradually increasing. The statement C shows that, exclusively of the September sales at Cincinnati, three hundred and fourteen thousand acres have been sold during the year ending on the thirtieth of September last. The proceeds of those sales, calculated on the supposition that every purchaser will be entitled to the discount allowed in case of prompt payment, would yield five hundred and fifteen thousand dollars. And, notwithstanding the difficulties which exist in drawing into the Treasury the moneys collected by the receivers of the remote land offices, it is believed that the actual receipts from that source will, for the ensuing year, exceed four hundred and fifty thousand dollars.

The permanent revenue of the United States may, therefore, including the duties on postage, and other small incidental branches, be computed at eleven millions two hundred thousand dollars.

And the payments in the Treasury, during the year 1805, on account of the temporary duties which constitute the "Mediterranean Fund," are estimated at five hundred and fifty thousand dollars; making, in the whole, for the probable receipts of that year, a sum of - - \$11,750,000

Expenditures.

The expenses of the year 1805, which must be defrayed out of that year, consist of the following items:

1. The annual appropriation of eight millions of dollars, for the payment of the principal and interest of the public debt; of which near \$3,700,000 will be applicable to the discharge of the principal, and the residue to the payment of interest	\$8,000,000
2. For the Civil Department, and all domestic expenses of a civil nature, including military pensions, the light-house and mint establishments, and the expenses of surveying public lands	952,000
3. For expenses incident to the intercourse with foreign nations, including the payment of awards under the seventh article of the British Treaty, and the permanent appropriation for Algiers	294,000
4. For the Military and Indian Departments, including the permanent appropriation for certain Indian tribes	954,000
5. For the Naval Establishment, viz. annual appropriation charged to the ordinary revenue - \$650,000	
Extraordinary expenses of last expedition to Tripoli, which will be payable in the year 1805, and are chargeable to the Mediterranean fund	590,000
	1,240,000

6. Reserved out of the Mediterranean fund, for meeting other extraordinary expenses, which may be incurred under the act constituting the fund	100,000
Making, altogether -	11,540,000
And deducted from the revenue of -	11,750,000
Leaves a surplus of -	210,000

Mediterranean Fund.

The sum which may probably be received during the year 1805, on account of that fund, and the payments during that year, which will ultimately be charged to the fund, are included in the preceding estimate of receipts and expenditures; but it is necessary to give a distinct view of the whole amount of revenue and expenses under that head.

The value of merchandise paying duties ad valorem, which was imported in the year 1802, amounts, after deducting the exportations of the same year, to \$31,706,000. The value of the same description of merchandise, imported in the year 1803, amounts to \$34,370,000. The additional duty of two and a half per cent. on that description of imported articles, constitutes the Mediterranean Fund, and calculated on the average importations of the two years, would have yielded, annually, \$826,000. But several articles, which, in the years 1802 and 1803, paid duties ad valorem, having, in lieu thereof, been charged with specific duties, by an act of last session, are not liable to the additional duty of two and a half per cent. Although the value of those articles cannot be precisely ascertained, it is believed that the deduction, on that account, will not amount to \$50,000, and the proceeds of the additional duty may be computed at the annual sum of \$780,000; and for the eighteen months commencing on the first of July, 1804, and ending on the 31st of December, 1805, at \$1,170,000. The expenses authorized under the act constituting the fund, have been predicated on that estimate, and apportioned in the following manner:

1. For the Navy Department, (in addition to the annual appropriation of \$650,000,) viz: There had been advanced, from the ordinary revenue, prior to the 30th of September, 1804	\$350,000
A further payment will be made before the first of January, 1805, of -	130,000
To be paid during the year 1805, on account of this fund, as stated under the fifth item of expenditures for the year 1805	590,000
	1,070,000
2. Reserved for other extraordinary expenses, which may be incurred for the same object, being the sixth item of expenditures for the year year 1805	100,000
	1,170,000

State of the Finances.

Those duties began to operate on the first day of July last; but, as they are payable six, eight, nine, ten, and twelve months after the importation, no part will be paid in the Treasury during the present year; and a sum of only \$550,000 is expected to be received in the course of the year 1805. For that sum only, credit has been taken in the general estimate of receipts for that year; whilst a part of the \$1,170,000, chargeable to the fund, has already been expended, and the rest is included in the preceding estimate of expenses for 1805. The difference, amounting to \$620,000, will, at the end of the next year, consist of outstanding bonds, payable in 1806. And, if the additional duty should, as well as the extraordinary expense for which it is appropriated, cease at that time, that outstanding balance will, as it is collected, replace in the Treasury the sum advanced for the ordinary revenues, in anticipation of the proceeds of the fund. For it is hoped that the situation of the Treasury will render it unnecessary to recur to the authority given by the act, to borrow on the credit of the fund.

Balance in the Treasury.

The greater part of the balance of \$5,860,981 54, which, on the 30th day of September, remained in the Treasury, was, in the last year's report, considered as applicable to the payments of extraordinary demands, therein stated.

As no payment has been made on that account during the last year, besides the first instalment of \$888,000 due to Great Britain, nor any other extraordinary expense has been discharged, than the advance of \$350,000, in anticipation of the Mediterranean Fund; the balance remaining in the Treasury on the 30th September, 1804, still amounted to \$4,882,225 11. That sum, together with the estimated surplus of revenue for the sum advanced from the ordinary revenue to the Mediterranean Fund, and the arrears of the direct tax and internal revenues, may still be considered as sufficient to discharge the balance of \$1,776,000, due to Great Britain; the loan of \$200,000 due to Maryland; and \$2,600,000 on account of the American claims assumed by the French convention. As the greater part of those demands will be paid in the course of the year 1805, the balance will not, probably, at the end of that year, exceed the sum which it is always expedient to retain in the Treasury.

Public Debt.

It appears, by the estimate D, that the payments on account of the principal of the public debt, have, during the year ending on the 30th September last, amounted to - - \$3,652,887 15

And during the three years and a half, commencing on the first day of April, 1801, and ending on the thirtieth day of September, 1804, to - - - - \$13,576,891 86

During the same period, a new debt of thirteen millions of dollars has been created by the purchase of Louisiana, viz :

Six per cent. stock, issued in conformity with the convention -	\$11,250,000 00
Amount of American claims assumed by the convention, and for the payment of which authority has been given to obtain a loan; two millions thereof being already provided for, out of the surplus specie in the Treasury - - - - -	1,750,000 00
	<u>13,000,000 00</u>

Another view of the subject may be given, in the following manner:

The balance in the Treasury amounted, on the first day of April, 1801, to - - - -	\$1,794,044 85
And on the thirtieth September, 1804, to - - - - -	4,882,225 11
	<u>3,088,180 26</u>
Making an increase of - -	3,088,180 26
From which deducting the proceeds of the sales of the bank shares - - - - -	1,287,600 00

Leaves for the increase arising from the ordinary revenue -	1,800,580 26
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From the 1st day of April, 1801, to the 30th of September, 1804, the following debts, which originated prior to that period, have been discharged :

1. Payment on account of the domestic and foreign debt, as above stated - - - - -	13,576,891 86
2. First instalment of the sum payable to Great Britain, "in satisfaction and discharge of the money which the United States might have been liable to pay, in pursuance of the provisions of the sixth article of the Treaty of 1794" - - - - -	888,000 00

Making altogether - -	16,265,472 12
And from which, deducting fifteen millions, being the purchase money of Louisiana - -	15,000,000 00

Leaves - - - -	<u>1,265,472 12</u>
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A difference of more than twelve hundred thousand dollars in favor of the United States.

It may be added that, if the revenue shall, during the ensuing year, prove, as is not improbable, more productive than has been estimated, the surplus will be applied towards the payment of the above-mentioned sum of \$1,750,000, yet unprovided for, on account of the American claims, and will, so far, diminish the amount of the loan authorized for that object.

From the preceding statements and estimates, it results that the United States have, during the period of three years and a half, ending on the 30th September last, discharged a large amount

Extension of Duty Bonds.

of principal of their old debt, than the whole amount of the new debt, which has been or may be created in consequence of the purchase of Louisiana; and that their existing and growing resources will, during the ensuing year, be sufficient, after defraying the current expenses of the year, and paying more than \$3,750,000, on account of the engagements resulting from the French and British Conventions, to discharge a further sum of near three millions and seven hundred thousand dollars of the principal of the public debt.

All which is respectfully submitted.

ALBERT GALLATIN,

Secretary of the Treasury.

TREASURY DEPARTMENT,

November 19th, 1804.

EXTENSION OF DUTY BONDS.

[Communicated to the Senate, January 17th, 1805.]

To the Honorable the Senate and House of Representatives of the United States in Congress assembled, the petition of the subscribers, merchants, residing in the city of New York, respectfully sheweth:

That your petitioners are concerned in trade and navigation, to a considerable extent, between the port of New York and different ports on the continent of South America; that, by the act, entitled "An act to regulate the collection of duties on imports and tonnage," the terms of credit allowed for the payment of duties imposed on all "goods, wares, and merchandise, (other than wines, salt, and teas) imported from any other place than Europe or the West Indies," are as follows: one half of such duties payable in six months, one quarter in nine months, and the other quarter in twelve months from the date of each respective importation, as by the said act, to which your petitioners refer, may more fully appear; that, by a construction of the said act, adopted by the collector of the port of New York, which appears to your petitioners to be evidently founded in mistake, and which they are advised by counsel is certainly incorrect, your petitioners conceive that they have been much aggrieved by being obliged to give bonds to the said collector for the payment of such duties, on goods imported from the continent of South America, the one half in three months, and the other half in six months, and to pay such duties, accordingly, as in the case of goods imported from the West Indies; that your petitioners are credibly informed, and believe, that a different construction of the said act, in this respect, has prevailed in several other ports of the United States, and the terms of credit, first above-mentioned, allowed, which your petitioners believe is obviously the intent and meaning of the said act; that some of your petitioners have, at length, resisted the payment of the said duties at the periods claimed by the said collector of the port of New York, and have commenced a suit in the circuit court of the United States, in equity, for the district of New York, in order to obtain a judicial determination

of the credits allowed for the payment of such duties by the said act, but, at the same time, offering, in the said suit, to pay the duties in question therein, at such times as should be directed by the said court, which suit is still depending and undetermined; and your petitioners hoped that the mode so adopted, of settling the construction of the said act, if there existed any doubt concerning it, would have been deemed proper, and that a judicial decision thereon would be regarded as regulating the subsequent practice under the same. But your petitioners have since been informed that some application or representation on this subject has been made to your honorable body, and that, in consequence thereof, a bill hath been introduced in the honorable the House of Representatives, proposing to alter or limit the terms of credit on goods imported into the United States from all places on the continent of South America, situated north of the equator, to the periods of credit allowed for duties on goods imported from the West Indies. Your petitioners cannot but view the limitation proposed by the said bill as particularly injurious to their interest, and to the prosperity of a trade, already extensive, and in which a large portion of citizens of the United States are engaged; and your petitioners beg leave to represent, as an important consideration in favor of the periods of credit which they consider to be well established by the act above-mentioned, that the voyages to the usual places of trade on the continent of South America; although north of the equator, are generally as long, and as difficult and expensive, as the ordinary course of voyages to Europe; that, in the apprehension of your petitioners, the principal object or reason of allowing a credit in the payment of duties on foreign imports is to enable the merchant, out of the proceeds of the sales of the goods imported, to reimburse himself the amount of such duties before they become payable; that, without a credit of sufficient length to answer this end, it can be of little importance whether any credit be, at all, given: for, if the amount of the duties are required to be paid before they can be realized from the proceeds of the imports on which they are charged, it imposes on the merchant the necessity of employing his capital, or a part of it, for the discharge of such duties, instead of applying to that object the proceeds of such imports. This would operate as a tax upon his capital, and would necessarily tend to cramp and embarrass the negotiations of trade, and, consequently, instead of increasing or aiding the revenue, would diminish its receipts. Your petitioners, therefore, apprehend that the true interests of the merchant and of the Government are, in this respect, the same, and that, considering the heavy duties already imposed on imports in general, it would be just as well as politic to allow a sufficient time of credit to enable the merchant to pay such duties out of the proceeds of the goods on which they are charged. Your petitioners also conceive that such credit, while it is at all times important to the merchant, cannot, when once in operation, prove, in any respect, material

Report of the Commissioners of the Sinking Fund.

or detrimental to the revenue; and, in conformity to these ideas, your petitioners are also of opinion, and such they believe to be the opinion of a large majority of this and other parts of the United States, that the periods of credit allowed on goods imported from the West Indies are too short and injurious to that trade. And your petitioners are convinced, from experience, that the trade with the continent of South America cannot be carried on, without great disadvantage, except upon terms of credit for the payment of duties equally beneficial with those which they conceive themselves at present entitled to by law, and they therefore humbly pray that your honorable body will not pass any act to limit or curtail such such credit. And your petitioners, &c.

New York, *January 9th*, 1805.

SINKING FUND.

[Communicated to the Senate February 5, 1805.]

The Commissioners of the Sinking Fund respectfully report to Congress as follows:

That the measures which have been authorized by the Board subsequent to their report of the 4th of February, 1804, so far as the same have been completed, are fully detailed in the report of the Secretary of the Treasury to this Board, dated the fourth day of the present month, and in the statements therein referred to, which are herewith transmitted, and prayed to be received as part of this report.

A. BURR, *President of Senate.*
J. MARSHALL, *Chief Justice U. S.*
A. GALLATIN, *Sec'y Treasury.*

WASHINGTON, *Feb. 5*, 1805.

The Secretary of the Treasury respectfully reports to the Commissioners of the Sinking Fund:

That the balance remaining unexpended at the close of the year 1802, and applied to payments falling due after that year, which balance, as appears by the statement F, annexed to the last annual report, amounted to two millions six hundred and fifty-six thousand nine hundred and thirty-three dollars and eight cents, - - - - - \$2,656,933 08

Together with the disbursements made during the year 1803, out of the Treasury, on account of the principal and interest of the public debt, which disbursements, as appears by the statement G, annexed to the last annual report, amounted to seven millions three hundred and twenty-seven thousand seven hundred and twenty-one dollars and fifty-nine cents - - - 7,327,721 59

And amounting altogether to nine millions nine hundred and eighty-four thousand six hundred and fifty-four dollars and sixty-seven cents - - - \$9,984,654 67

Have been accounted for in the following manner, viz:

1. There was repaid into the Treasury, during the year 1803, on account of the principal of protested bills,

and of advances made to Commissioners of Loans, as appears by the statement I, annexed to the last annual report a sum of thirteen thousand one hundred and seventeen dollars and forty-eight cents,

\$13,117 48

2. The sums actually applied during the same year, to the payment of the principal and interest of the public debt, as ascertained by accounts rendered to the Treasury Department, amount, as will appear by the statement A, to eight millions six hundred and twenty two thousand four hundred dollars and sixty-eight cents, viz:

1. Paid in reimbursements of the principal of the debt, \$4,727,788 44

2. Paid on account of the interest and charges on the same - - - 3,894,612 24

8,622,400 68

3. The balance remaining unexpended at the close of the year 1803, and applicable to payments falling due after that year, as ascertained by accounts rendered to the Treasury Department, amounted, as will appear by the statement B, to one million three hundred and forty-nine thousand one hundred and thirty-six dollars and fifty-one cents - - - - - 1,349,136 51

\$9,984,654 67

That, during the year 1804, the following disbursements were made out of the Treasury, on account of the principal and interest of the public debt viz:

1. On account of the reimbursement and interest of the domestic funded debt \$4,612,171 06

2. On account of domestic loans obtained from the Bank of the U. States, viz:
On account of the principal, - - - \$250,000 00
On account of interest, 60,593 68

310,593 68

3. On account of the domestic unfunded debt, - - - - - 653 37

4. On account of the principal and interest of the foreign debt, and of the interest on the Louisiana stock, - - - 3,336,427 44

Amounting altogether, as will appear by the annexed list of warrant C, to eight millions two hundred and fifty-nine thousand eight hundred and forty-five dollars and fifty-five cents, - - - \$8,259,845 55

Which disbursements were made out of the following funds, viz:

1. From the moneys appropriated by the third section of the act of 10th November, 1803, for paying the interest accruing on the Louisiana stock, to the end of the year 1803, - - - \$22,499 33

2. From the funds constituting the annual appropriation of \$800,000 for the year 1804, viz:

From the fund arising from interest on the debt transferred to the Commis-

Description of Louisiana.

sioners of the Sinking Fund as per statement I, - - -	\$366,223 50
From the funds arising from the sales of public lands, being the amount of moneys paid into the Treasury, from the 1st October 1803, to the 30th June 1804, as per statement K, - - -	324,021 66
From the proceeds of duties on goods, wares, and merchandise, imported, and on the tonnage of ships or vessels, - - -	6,556,518, 44
Amounting, altogether, to - - -	7,246,763 60
Which sum of - - -	7,246,763 60
Together with the sum advanced during the year 1803, on account of the appropriation for the year 1804, and amounting, as appears by the last annual report, to - - -	753,236 40

Makes, in the whole, the annual appropriation for the year 1804, of - - - \$8,000,000 00

3. From the proceeds of duties on goods, wares, and merchandise, imported, and on the tonnage of ships or vessels, advanced in part, and on account of the annual appropriation for the year 1805, - - -	829,801 59
4. From repayments in the Treasury, on account of remittances purchased for providing for the foreign debt, and of advances made to Commissioners of Loans, as will appear from statement F, viz:	
Repayment of the purchase money and advances, - - -	\$121,446 51
Damages and interest recovered, - - -	32,370 91

5. From the moneys appropriated by law, for paying commissions to agents employed in the purchase of remittances for the foreign debt, being the amount paid at the Treasury, during the year 1804, for that object, and will appear by the statement C, - - -	6,863 01
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That the above-mentioned disbursements, together with the above stated balance of - - -	1,349,136 51
which remained unexpended at the close of the year 1803, and with a further sum, arising from profit on remittances purchased in the year 1804, and amounting, as will appear by the statement D, to - - -	45,049 25

And amounting, altogether, to nine millions six hundred and fifty-four thousand and thirty-one dollars and thirty-one cents, - - - - \$9,654,031 31

will be accounted for in the next annual report, in conformity with the accounts which shall then have been rendered to the Treasury Department. That, in the meanwhile, the manner in which the said sum has been applied, is estimated as follows, viz :

1. The repayments in the Treasury, on account of principal, have, during the year 1804, amounted, as by the above-mentioned statement E, to - - -	\$121,446 51
2. The sums actually applied during the year 1804, to the payment of the principal and interest of the public debt, are estimated as follows, viz :	
1. Paid in reimbursement of the principal of the public debt - - -	\$3,205,248 52
2. Do. on account of the interest and charges on the same, as will appear by the estimate F, - - -	4,006,799 69
	7,212,048 21

3. The balance remaining unexpended at the close of the year 1804, and applicable to payments falling due after that year, is estimated, as per estimate G, at - - -

\$9,654,031 31

That no purchases of the debt of the United States have been made since the date of the last report to Congress, and that the statement H exhibits the amount of stock transferred to the Commissioners of the Sinking Fund, in trust for the United States, to the 31st December, 1804, including the sum of \$12,730 27, being the aggregate of the several species of stock transferred in the year 1804, in payment for public lands.

All which is respectfully submitted.

A. GALLATIN, *Sec. Treasury.*
TREASURY DEPARTMENT, Feb. 4, 1805.

DESCRIPTION OF LOUISIANA.

[Communicated to Congress Nov. 14, 1803.]

To the Senate and House of

Representatives of the United States :

I now communicate a digest of the information I have received relative to Louisiana, which may be useful to the Legislature in providing for the government of the country. A translation of the most important laws in force in that province, now in the press, shall be the subject of a supplementary communication, with such further and material information as may yet come to hand.

TH. JEFFERSON.

NOVEMBER 14, 1803.

AN ACCOUNT OF LOUISIANA.

The object of the following pages is to consolidate the information respecting the present state of Louisiana, furnished to the Executive by several individuals among the best informed upon the subject.

Of the province of Louisiana no general map, sufficiently correct to be depended upon, has been published, nor has any been yet procured from a private source. It is, indeed, probable that surveys have never been made upon so extensive a

Description of Louisiana.

scale as to afford the means of laying down the various regions of a country which, in some of its parts, appears to have been but imperfectly explored.

Boundaries.

The precise boundaries of Louisiana, westward of the Mississippi, though very extensive, are at present involved in some obscurity. Data are equally wanting to assign with precision its northern extent. From the source of the Mississippi, it is bounded eastwardly, by the middle of the channel of that river, to the thirty-first degree of latitude; thence, it is asserted, upon very strong grounds, that, according to its limits, when formerly possessed by France, it stretches to the east as far, at least, as the river Perdido, which runs into the bay of Mexico, eastward of the river Mobile.

It may be consistent with the view of these notes to remark, that Louisiana, including the Mobile settlements, was discovered and peopled by the French, whose monarchs made several grants of its trade, in particular to Mr. Crozat, in 1712, and some years afterwards, with his acquiescence, to the well known company projected by Mr. Law. This company was relinquished in the year 1731. By a secret convention, on the 3d November, 1762, the French Government ceded so much of the province as lies beyond the Mississippi, as well as the island of New Orleans, to Spain; and, by the treaty of peace which followed in 1763, the whole territory of France and Spain, eastward of the middle of the Mississippi, to the Iberville, thence, through the middle of that river and the lakes Maurepas and Pontchartrain to the sea, was ceded to Great Britain. Spain having conquered the Floridas from Great Britain, during our Revolutionary war, they were confirmed to her by the Treaty of Peace of 1784. By the Treaty of St. Ildefonso, of the 1st of October, 1800, His Catholic Majesty promises and engages on his part to cede back to the French Republic, six months after the full and entire execution of the conditions and stipulations therein contained, relative to the Duke of Parma, "the colony or province of Louisiana, with the same extent that it actually has in the hands of Spain, that it had when France possessed it, and such as it ought to be after the treaties subsequently entered into between Spain and other States." This treaty was confirmed and enforced by that of Madrid, of the 21st of March, 1801. From France it passed to us by the Treaty of the 30th of April last, with a reference to the above clause as descriptive of the limits ceded.

Divisions of the Province.

The province as held by Spain including a part of West Florida, is laid off into the following principal divisions: Mobile, from Balize to the city, New Orleans, and the country on both sides of lake Pontchartrain, First and Second German Coasts, Catahanose, Fourche, Venezuela, Iberville, Galveztown, Baton Rouge, Pointe Coupée Attakapas, Opelousas, Ouachita, Avoyelles, Rapide, Natchitoches, Arkansas, and the Illinois.

In the Illinois there are commandants at New Madrid, St. Genevieve, New Bourbon, St. Charles, and St. Andrew's, all subordinate to the commandant-general.

Baton Rouge having been made a Government subsequently to the Treaty of Limits. &c. with Spain, the posts of Manchac and Thompson's creek, were added to it.

Chapitoulas has sometimes been regarded as a separate command, but is now included within the jurisdiction of the city. The lower part of the river has likewise had occasionally a separate commandant.

Many of the present establishments are separated from each other by immense and trackless deserts, having no communication with each other by land, except now and then a solitary instance of its being attempted by hunters, who have to swim rivers, expose themselves to the inclemency of the weather, and carry their provisions on their backs for a time, proportioned to the length of their journey. This is particularly the case on the west of the Mississippi, where the communication is kept up only by water between the capital and the distant settlements; three months being required to convey intelligence from the one to the other by the Mississippi. The usual distance accomplished by a boat in ascending is five leagues per day. The rapidity of the current, in the spring season especially, when the waters of all the rivers are high, facilitates the descent, so that the same voyage by water, which requires three or four months to perform from the capital, may be made to it in from twelve to sixteen days. The principal settlements in Louisiana are on the Mississippi, which begins to be cultivated about twenty leagues from the sea; where the plantations are yet thin, and owned by the poorest people. Ascending, you see them improve on each side till you reach the city, which is situated on the east bank, on a bend, of the river, thirty-five leagues from the sea.

Chapitoulas, first and second German coasts, Catahanose, Fourche, and Iberville.

The best and most improved are above the city, and comprehended what is there known by the Paroisse de Chapitoulas, Premier and Second Cote des Allomands, and extend sixteen leagues.

Above this begins the parish of Catahanose, or first Acadian settlement, extending eight leagues on the river. Adjoining it, and still ascending, is the second Acadian settlement, or parish of the Fourche, which extends about six leagues. The parish of Iberville then commences, and is bounded on the east side by the river of the same name; which, though dry a great part of the year, yet, when the Mississippi is raised, it communicates with the lake Maurepas and Pontchartrain, and through them with the sea, and thus forms what is called the island of New Orleans. Except on the point just below the Iberville, the country from New Orleans is settled the whole way along the river, and presents a scene of uninterrupted plantations in sight of each other, whose fronts to the Mississippi are all cleared, and occupy on

Description of Louisiana.

that river from five to twenty-five acres, with a depth of forty; so that a plantation of five acres in front contains two hundred. A few sugar plantations are formed in the parish of Catahanose, but the remainder is devoted to cotton and provisions, and the whole is an excellent soil incapable of being exhausted. The plantations are but one deep on the island of New Orleans, and on the opposite side of the river, as far as the mouth of the Iberville, which is thirty-five leagues above New Orleans:

Bayou de la Fourche, Attakapas, and Opelousas.

About twenty five leagues from the last-mentioned place, on the west side of the Mississippi, the creek or bayou of the Fourche, called in old maps *La Riviere des Chitamaches*, flows from the Mississippi, and communicates with the sea, to the west of the Balize. The entrance of the Mississippi is navigable only at high water, but will then admit of craft of from sixty to seventy tons burden. On both banks of this creek are settlements, one plantation deep, for near fifteen leagues; and they are divided into two parishes. The settlers are numerous, though poor, and the culture is universally cotton. On all creeks, making from the Mississippi, the soil is the same as on the bank of the river, and the border is the highest part of it, from whence it descends gradually to the swamp. In no place on the low lands is there depth more than suffices for one plantation before you come to the low grounds incapable of cultivation. This creek affords one of the communications to the two populous and rich settlements of Attakapas and Opelousas, formed on and near the small rivers Teche and Vermillion, which flow into the bay of Mexico. But the principal and swiftest communication is by the bayou or creek of Plaquemines, whose entrance into the Mississippi is seven leagues higher up on the same side, and thirty-two above New Orleans. These settlements abound in cattle and horses, have a quantity of good land in the vicinity, and may be made of great importance. A part of their produce is sent by sea to New Orleans, but the greater part is carried in the batteaux by the creeks above mentioned.

Baton Rouge, and its dependencies.

Immediately above the Iberville, and on both sides of the Mississippi, lies the parish of Manchac, which extends four leagues on the river, and is well cultivated. Above it commences the settlement of Baton Rouge, extending about nine leagues. It is remarkable as being the first place where the high land is contiguous to the river, and here it forms a bluff from thirty to forty feet above the greatest rise of the river. Here the settlements extend a considerable way back on the east side; and this parish has that of Thompson's creek and bayou Sara subordinate to it. The mouth of the first of these creeks is about forty-nine leagues from New Orleans, and that of the latter two or three leagues higher up. They run from northeast to southwest, and their head waters are north of the thirty-first degree of latitude. Their banks have the best soil, and the

greatest number of good cotton plantations, of any part of Louisiana, and are allowed to be the garden of it.

Pointe Coupée and Fausse Riviere.

Above Baton Rouge, at the distance of fifty leagues from New Orleans, on the west side of the Mississippi, is Pointe Coupée, a populous and rich settlement, extending eight leagues along the river. Its produce is cotton. Behind it, on an old bed of the river, now a lake, whose outlets are closed up, is the settlement of Fausse Rivière which is well cultivated.

In the space now described from the sea, as high as and including the last-mentioned settlement, are contained three-fourths of the population, and seven-eighths of the riches of Louisiana.

From the settlement of Pointe Coupée, on the Mississippi, to Cape Girardeau, above the mouth of the Ohio, there is no land on the west side that is not overflowed in the spring to the distance of eight or ten leagues from the river, with from two to twelve feet of water, except a small spot near New Madrid; so that, in the whole extent, there is no possibility of forming a considerable settlement contiguous to the river on that side. The eastern bank has, in this respect, a decided advantage over the western, as there are on it many situations which effectually command the river.

Red River and its Settlements.

On the west side of the Mississippi, seventy leagues from New Orleans, is the mouth of the Red river, on whose banks and vicinity are the settlements of Rapide, Avoyelles, and Natchitoches, all of them thriving and populous. The latter is situated seventy-five leagues up the Red river. On the north side of the Red river, a few leagues from its junction with the Mississippi, is the Black river; on one of whose branches, a considerable way up, is the infant settlement of Ouachita, which, from the richness of the soil, may be made a place of importance. Cotton is the chief produce of these settlements; but they have likewise a considerable Indian trade. The river Rouge, or Red river, is used to communicate with the frontiers of New Mexico.

Concord, Arkansas, St. Charles, St. Andrew, &c.

There is no other settlement on the Mississippi, except the small one called Concord, opposite to the Natchez, till you come to the Arkansas river, whose mouth is two hundred and fifty leagues above New Orleans. Here there are but a few families, who are more attached to the Indian trade (by which chiefly they live) than to cultivation. There is no settlement from this place to New Madrid, which is itself inconsiderable. Ascending the river, you come to Cape Girardeaux, St. Genevieve, and St. Louis, where, though the inhabitants are numerous, they raise little for exportation, and content themselves with trading with the Indians and working a few lead mines. This country is very fertile, especially on the banks of the Missouri, where there have been formed two settlements, called St. Charles and St. Andrew, mostly by emigrants from Kentucky. The

Description of Louisiana.

peltry procured in the Illinois is the best sent to the Atlantic market, and the quantity is very considerable. Lead is to be had with ease, and in such quantities as to supply all Europe, if the population were sufficient to work the numerous mines to be found within two or three feet from the surface in various parts of the country. The settlements about the Illinois were first made by the Canadians, and their inhabitants still resemble them in their aversion to labor, and love of a wandering life. They contain but few negroes compared with the number of the whites; and it may be taken for a general rule, in proportion to the distance from the capital, the number of blacks diminishes below that of the whites; the former abounding most on the rich plantations in its vicinity.

General description of Upper Louisiana.

When compared with the Indian Territory, the face of the country in Upper Louisiana is rather more broken, though the soil is equally fertile. It is a fact, not to be contested, that the west side of the river possesses some advantages not generally incident to those regions. It is elevated and healthy, and well watered with a variety of large, rapid streams, calculated for mills and other water-works. From Cape Girardeau, above the mouth of the Ohio, to the Missouri, the land on the east side of the Mississippi is low and flat, and occasionally exposed to inundations; that on the Louisiana side, contiguous to the river, is generally much higher, and in many places very rocky on the shore. Some of the heights exhibit a scene truly picturesque. They rise to a height of at least three hundred feet, faced with perpendicular *lime and free-stone*, carved into various shapes and figures by the hand of nature, and afford the appearance of a multitude of antique towers. From the tops of these elevations the land gradually slopes back from the river, without gravel or rock, and is covered with valuable timber. It may be said, with truth, that for fertility of soil no part of the world exceeds the borders of the Mississippi: the land yields an abundance of all the necessities of life, and almost spontaneously; very little labor being required in the cultivation of the earth. That part of Upper Louisiana which borders on north Mexico is one immense prairie. It produces nothing but grass. It is filled with buffalo, deer, and other kinds of game. The land is represented as too rich for the growth of forest trees.

It is pretended that Upper Louisiana contains in its bowels many silver and copper mines, and various specimens of both are exhibited. Several trials have been made to ascertain the fact; but the want of skill in the artists has hitherto left the subject undecided.

The salt works are also pretty numerous: some belong to individuals; others to the public. They already yield an abundant supply for the consumption of the country, and, if properly managed, might become an article of more general exportation. The usual price per bushel is one dollar and a half in cash at the works. The price will

be still lower as soon as the manufacture of the salt is assumed by Government, or patronised by men who have large capitals to employ in the business. One extraordinary fact, relative to salt, must not be omitted. There exists, about one thousand miles up the Missouri, and not far from that river, a salt mountain. The existence of such a mountain might well be questioned, were it not for the testimony of several respectable and enterprising traders who have visited it, and who have exhibited several bushels of the salt to the curiosity of the people of St. Louis, where some of it still remains. A specimen of the same salt has been sent to Marietta. This mountain is said to be one hundred and eighty miles long, and forty-five in width, composed of solid rock salt, without any trees, or even shrubs on it. Salt springs are very numerous beneath the surface of this mountain, and they flow through the fissures and cavities of it. Caves of saltpetre are found in Upper Louisiana, though at some distance from the settlements. Four men, on a trading voyage, lately discovered one several hundred miles up the Missouri. They spent five or six weeks in the manufacture of this article, and returned to St. Louis with four hundred weight of it. It proved to be good, and they sold it for a high price.

The geography of the Mississippi and Missouri, and their contiguity for a great length of way, are but little known. The traders assert that, one hundred miles above their junction, a man may walk from one to the other in a day; and it is also asserted that, seven hundred miles still higher up, the portage may be crossed in four or five days. This portage is frequented by traders who carry on a considerable trade with some of the Missouri Indians. Their general route is through Green Bay, which is an arm of Lake Michigan; they then pass into a small lake connected with it, and which communicates with the Fox river; they then cross over a short portage into the Ouisconsin river, which unites with the Mississippi some distance below the Falls of St. Anthony. It is also said that the traders communicate with the Mississippi above these falls, through Lake Superior; but their trade in that quarter is much less considerable.

Canal of Carondelet.

Behind New Orleans is a canal about a mile and a half long, which communicates with a creek called the bayou St. Jean, flowing into Lake Pontchartrain. At the mouth of it, about two and a half leagues from the city, is a small fort, called St. Jean, which commands the entrance from the lake. By this creek the communication is kept up through the lake and the rigolets to Mobile and the settlements in West Florida. Craft drawing from six to eight feet water can navigate to the mouth of the creek; but, except in particular swells of the lake cannot pass the bar without being lightened.

St. Bernardo.

On the east side of the Mississippi, about five leagues below New Orleans, and at the head of the English bend, is a settlement known by the

Description of Louisiana.

name of the Poblacion de St. Bernardo, or the Terre au Bœufs, extending on both sides of a creek or drain, whose head is contiguous to the Mississippi, and which flowing eastward, after a course of eighteen leagues, and dividing itself into two branches, falls into the sea and Lake Borgne. This settlement consists of two parishes, almost all the inhabitants of which are Spaniards from the Canaries, who content themselves with raising fowls, corn, and garden stuff for the market at New Orleans. The lands cannot be cultivated to any great distance from the banks of the creek, on account of the vicinity of the marsh behind them, but the place is susceptible of great improvement, and of affording another communication to small craft of from eight to ten feet draught, between the sea and the Mississippi.

Settlements below the English turn.

At the distance of sixteen leagues below New Orleans, the settlements on both banks of the river are of but small account. Between these and the fort of Plaquemines the country is overflowed in the Spring, and, in many places, is incapable of cultivation at any time, being a morass almost impassable by man or beast. This small tongue of land extends considerably into the sea, which is visible on both sides of the Mississippi from a ship's mast.

Country from Plaquemines to the sea, and effect of the hurricanes.

From Plaquemines to the sea is twelve or thirteen leagues. The country is low, swampy, chiefly covered with reeds, having little or no timber, and no settlement whatever. It may be necessary to mention here, that the whole lower part of the country, from the English turn downward, is subject to overflowing in hurricanes, either by the recoiling of the river, or reflux from the sea on each side; and, on more than one occasion, it has been covered from the depth of two to ten feet, according to the descent of the river, whereby many lives were lost, horses and cattle swept away, and a scene of destruction laid. The last calamity of this kind happened in 1794; but, fortunately, they are not frequent. In the preceding year the engineer who superintended the erection of the fort at Plaquemines was drowned in his house near the fort, and the workmen and garrison escaped only by taking refuge on an elevated spot in the fort, on which there were, notwithstanding, two or three feet of water. These hurricanes have generally been felt in the month of August. Their greatest fury lasts about twelve hours. They commence in the southeast, veer about to all points of the compass, are felt most severely below, and seldom extend more than a few leagues above New Orleans. In their whole course they are marked with ruin and desolation. Until that of 1793, there had been none felt from the year 1780.

Passes, or mouths of the Mississippi.

About eight leagues below Plaquemines the Mississippi divides itself into three channels, which are called the passes of the river, viz: the

East, South, and Southwest passes. Their course is from five to six leagues to the sea. The space between is a marsh, with little or no timber on it; but, from its situation, it may hereafter be rendered of importance. The East pass, which is on the left hand going down the river, is divided into two branches about two leagues below, viz: the Pass à la Loutre, and that known to mariners by the name of the Balize, at which there is a small block-house, and some huts of the pilots, who reside only here. The first of these secondary channels contains at present but eight feet water; the latter from fourteen to sixteen, according to the seasons. The South pass, which is directly in front of the Mississippi, has always been considered as entirely choked up, but has ten feet water. The Southwest pass, which is on the right, is the longest and narrowest of all the passes, and a few years ago had eighteen feet water, and was that by which the large ships always entered and sailed from the Mississippi. It has now but eight feet water, and will probably remain so for some time. In speaking of the quantity of water in the passes, it must be understood of what is on the bar of each pass; for immediately after passing the bar, which is very narrow, there are from five to seven fathoms at all seasons.

Country East of Lake Pontchartrain.

The country on the east side of Lake Pontchartrain to Mobile, and including the whole extent between the American line, the Mississippi above New Orleans, and the lakes, (with the exception of a tract of about thirty miles on the Mississippi, and as much square, contiguous to the line, and comprehending the waters of Thompson's creek, bayou Sara, and the Amet,) is a poor, thin soil, overgrown with pine, and contains no good land whatever, unless on the banks of a few small rivers. It would, however, afford abundant supplies of pitch, tar, and pine lumber, and would feed large herds of cattle.

The Inhabitants, and their Origin.

The inhabitants of Louisiana are chiefly the descendants of the French and Canadians. There are a considerable number of English and Americans in New Orleans. The two German coasts are peopled by the descendants of settlers from Germany, and a few French mixed with them. The three succeeding settlements, up to Baton Rouge, contain mostly Acadians, banished from Nova Scotia by the English, and their descendants. The government of Baton Rouge, especially the east side, which includes all the country between the Iberville and the American line, is composed partly of Acadians, a very few French, and a great majority of Americans. On the west side they are mostly Acadians; at Point Coupée and Fausse Rivière they are French and Acadians. Of the population of the Attakapas and Opelousas, a considerable part is American. Natchitoches, on the Red river, contains but a few Americans, and the remainder of the inhabitants are French; but the former are more numerous in the other settlements on that river, viz:

Description of Louisiana.

Avoyelles, Rapide, and Ouachita. At Arkansas they are mostly French, and at New Madrid Americans. At least two-fifths, if not a greater proportion of all the settlers on the Spanish side of the Mississippi, in the Illinois country, are likewise supposed to be Americans. Below New Orleans the population is altogether French and the descendants of Frenchmen.

New Orleans.

By recurring to the maps, and examining the position of Louisiana, it will appear that the lower part projects considerable into the sea. It has, in all probability, been formed by the sediment brought down by the current and deposited on the flat coast. There is, therefore, on the east side but a very narrow slip along the bank of the river, from the sea to the Iberville. The land is not generally susceptible of cultivation more than a mile in depth from the river; the rest is low and swampy to the lakes and the sea; but, in general, abounds with cypress timber, which is sawed by mills, which are worked by artificial streams from the Mississippi, in the time of freshets. They generally run five months in the year.

What has been said of the east equally applies to the west side of the river. The soil and situation are nearly the same. After leaving the bank of the river there is an immense swamp, intersected by creeks and lakes, extending to the highlands of Attakapas, and occupying a space of thirty or forty leagues.

The city of New Orleans, which is regularly laid out on the east side of the Mississippi, in latitude 30 degrees north, and longitude 90 degrees west, extends nearly a mile along the river, from the gate of France on the south, to that of Chapitoulas above, and a little more than one-third of a mile in breadth from the river to the rampart; but it has an extensive suburb on the upper side. The houses in front of the town, and for a square or two backward, are mostly of brick, covered with slate or tile, and many of two stories. The remainder are of wood, covered with shingles. The streets cross each other at right angles, and are thirty-two French feet. There is in the middle of the front of the city a *place d'armes*, facing which the church and town-house are built. There are from twelve to fourteen hundred houses in the city and suburbs. The population may be estimated at ten thousand, including the seamen and garrison. It was fortified in 1793; but the works were originally defective, could not have been defended, and are now in ruins. The powder magazine is on the opposite bank of the river.

The public buildings, and other public property in New Orleans, are as follows:

Two very extensive brick stores, from one hundred and sixty to one hundred and eighty feet in length, and about thirty in breadth. They are one story high and covered with shingles.

A Government house, stables, and garden, occupying a front of about two hundred and twenty feet on the river, in the middle of the town, and extending three hundred and thirty-six feet back to the next street.

A military hospital.

An ill-built custom-house of wood, almost in ruins, in the upper part of the city, near the river.

An extensive barrack in the lower part of the city, fronting on the river, and calculated to lodge twelve or fourteen hundred men.

A large lot adjoining the King's stores, with a few sheds in it. It serves as a park for artillery.

A prison, town-house, market-house, assembly room, some ground rents, and the common about the town.

A public school for the rudiments of the Spanish language.

A cathedral church unfinished, and some houses belonging to it.

A charitable hospital, with some houses belonging to it, and a revenue of \$1,500 annually, endowed by an individual lately deceased.

The Canal de Carondelet has been already described.

Number of Inhabitants.

According to the annexed census, (No. 2.) of Louisiana, including Pensacola and the Natchez, as made in 1785, the whole number of inhabitants amounted to thirty-two thousand and sixty-two, of which fourteen thousand two hundred and fifteen were free whites, one thousand three hundred and three free people of color, and sixteen thousand five hundred and forty-four slaves.

The statement No. 4, from the latest documents, makes the whole number forty-two thousand three hundred and seventy-five; the free whites, twenty-one thousand two hundred and forty-four; the free people of color, one thousand seven hundred and sixty-eight; and the slaves, twelve thousand nine hundred and twenty.

A particular statement respecting the population, &c., of Upper Louisiana, and another containing the census of New Orleans, in this year, are numbered 5 and 6, in the appendix.

These papers certainly exhibit a smaller number than the real population of the country. From an official document, made in July last, and received from Attakapas since the statement No. 4 was formed, it appears that it contained two thousand two hundred and seventy whites, two hundred and ten free people of color, one thousand two hundred and sixty-six slaves; in all, three thousand seven hundred and forty-six souls, instead of one thousand four hundred and forty-seven, as therein stated. It is highly probable that the return for the neighboring district of Opelousas is in the same proportion underrated.

A conjectural estimation, made by a gentleman of great respectability and correct information, residing at Natchez, raises the number of whites in the island of New Orleans, on the west side of the river, and some settlements on the east side, to fifty thousand one hundred and fifty, and the number of blacks to thirty-nine thousand eight hundred and twenty. His statement is also subjoined, No. 3.

It is at all times difficult to obtain the full census of a country, and the impediments are increased in this, from its scattered population. The

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actual enumeration may, therefore, fall short of the true numbers.

Militia.

There is a militia in Louisiana. The following is the return of it, made to the Court of Spain by the Baron of Carondelet:

From Balize to the city.—Volunteers of the Mississippi—four companies of 100 men each—complete	400
City.—Battalion of the city, five companies	500
Artillery company, with supernumeraries	120
Carabineers, or privileged companies of horse, two companies of 70 each, incomplete	100
Mulattoes, two companies; negroes one	300
Mixed legion of the Mississippi, comprehending Galveston, Baton Rouge, Point Coupée, Attakapas, and Opelousas, viz: two companies of grenadiers, eight of fusileers, four of dragoons, and two lately added from Bayou Sara—in all, sixteen companies of 100 men each	1600
Avoyelles.—One company of infantry	100
Ouachita.—One company of cavalry	100
Natchitoches.—One company of infantry and one of cavalry	200
Arkansas.—One company of infantry and cavalry	100
Illinois.—Four companies of cavalry and four of infantry; these are always above the complement	800
Provincial regiment of Germans and Acadians, from the first German coast to Iberville—companies—viz: two of grenadiers and eight of fusileers	1000
Mobile, and the country east of Lake Ponchartrain, two companies of horse and foot, incomplete	120

5,440

The same gentleman alluded to, page 348, makes the number of the militia to amount to 10,340 men within the same limits to which his estimate of the population applies. He distributes them in the several settlements as follows:

1. The island of New Orleans, with the opposite margin and the adjacent settlements	5000
2. The west margin from Manchac, including Pointe Coupée, and extending to the Red river	800
3. Attakapas, along the coast, between the delta of the Mississippi and the Sabine river	350
4. Opelousas	750
5. Red river, including bayou Bœuf, Avoyelles, Rapides, and Natchitoches	1000
6. Ouachita	300
7. Concord	40
8. Arkansas	150
9. New Madrid and its vicinity	350
10. Illinois and Missouri	1000
11. The settlements on the east side of the	

Mississippi, from the American line to the Iberville, and some other settlements - - - - - 600

10,340

It is to be observed that none of these statements include the country beyond the river Sabine, nor even all those which lie eastwardly of it. Data are also wanting to give them.

Fortifications.

St. Louis has a lieutenant colonel to command it, and but few troops. Baton Rouge is an ill-constructed fort, and has about fifty men. In describing the canal of Carondelet, the small fort of St. Jean has been mentioned, as has the block-house at the Balize, in its proper place. The fortifications of New Orleans, noticed before, consist of five ill constructed redoubts, with a covered way, palisade, and ditch. The whole is going fast to decay, and it is supposed they would be of but little service in case of an attack. Though the powder magazine is on the opposite side of the river, there is no sufficient provision made for its removal to the city in case of need.

The fort of Plaquemines, which is about twelve or thirteen leagues from the sea, is an ill-constructed, irregular brick work, on the eastern side of the Mississippi, with a ditch in front of the river, and protected on the lower side by a deep creek, flowing from the river to the sea. It is, however, imperfectly closed behind, and almost without defence there; too much reliance having been placed on the swampiness of the ground which hardens daily. It might be taken, perhaps, by escalade, without difficulty. It is in a degree ruinous. The principal front is meant to defend the approach from sea, and can oppose, at most, but eight heavy guns. It is built at a turn in the river where ships in general must anchor, as the wind which brings them up so far, is contrary in the next reach which they must work through; and they would therefore be exposed to the fire of the fort. On the opposite bank are the ruins of a small closed redoubt, called Fort Bourbon, usually garrisoned by a sergeant's command. Its fire was intended to flank that of the fort of Plaquemines, and prevent shipping and craft from ascending or descending on that side. When a vessel appears, a signal is made on one side and answered on the other. Should she attempt to pass, without sending a boat on shore, she would be immediately fired upon.

Indians.

The Indian nations within the limits of Louisiana are, as far as known, as follows, and consist of the numbers hereafter specified.

On the eastern bank of the Mississippi, about twenty-five leagues above Orleans, are the remains of the nation of Houmas, or red men, which do not exceed sixty persons. There are no other Indians settled on this side of the river, either in Louisiana or West Florida, though they are at times frequented by parties of wandering Choctaws.

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On the west side of the Mississippi are the remains of the Tounicas, settled near, and above Pointe Coupée, on the river, consisting of fifty or sixty persons.

In the Attakapas.—On the lower parts of the Bayou Teche, at about eleven or twelve leagues from the sea, are two villages of Chitimachas, consisting of about one hundred souls.

The Attakapas, properly so called, dispersed throughout the district, and chiefly on the bayou or creek of Vermilion, about one hundred souls.

Wanderers of the tribes of Bilexis and Choctaws, on Bayou Crocodile, which empties into the Teche, about fifty souls.

In the Opelousas, to the northwest of Attakapas.—Two villages of Alabamas, in the centre of the district near the church, consisting of one hundred persons.

Conchates, dispersed through the country as far west as the river Sabine, and its neighborhood, about three hundred and fifty persons.

On the river Rouge.—At Avoyelles, nineteen leagues from the Mississippi, is a village of the Biloni nation, and another on the lake of the Avoyelles; the whole about sixty souls.

At the Rapids, twenty-six leagues from the Mississippi, is a village of Choctaws of one hundred souls, and another of Biloxes, about two leagues from it, of about one hundred more; about eight or nine leagues higher up the Red river is a village of about fifty souls. All these are occasionally employed by the settlers in their neighborhood as boatmen.

About eighty leagues above Natchitoches, on the Red river, is the nation of the Cadoquies, called by abbreviation Cados; they can raise from three to four hundred warriors; are the friends of the whites, and are esteemed the bravest and most generous of all the nations in this vast country; they are rapidly decreasing, owing to intemperance and the numbers annually destroyed by the Osages and Choctaws.

There are, besides the foregoing, at least four to five hundred families of Choctaws, who are dispersed on the west side of the Mississippi, on the Ouachita and Red rivers, as far west as Natchitoches, and the whole nation would have emigrated across the Mississippi, had it not been for the opposition of the Spaniards and the Indians on that side who had suffered by their aggressions.

On the river Arkansas, &c.—Between the Red river and the Arkansas there are but a few Indians, the remains of tribes almost extinct. On this last river is the nation of the same name, consisting of about two hundred and sixty warriors; they are brave, yet peaceable and well disposed, and have always been attached to the French, and espoused their cause in the wars with the Chickasaws, whom they have always resisted with success. They live in three villages; the first is at eighteen leagues from the Mississippi, on the Arkansas river, and the others are at three and six leagues from the first. A scarcity of game on the eastern side of the Mississippi has lately induced a number of Cherokees, Choctaws,

Chickasaws, &c., to frequent the neighborhood of Arkansas, where game is still in abundance; they have contracted marriages with the Arkansas, and seem inclined to make a permanent settlement, and incorporate themselves with that nation. The number is unknown, but is considerable, and is every day increasing.

On the river St. Francis, in the neighborhood of New Madrid, Cape Girardeau, Rivière à la Pomme, and the environs, are settled a number of vagabonds, emigrants from the Delawares, Shawnee, Miamis, Chickasaws, Cherokees, Piorias, and supposed to consist in all of five hundred families; they are at times troublesome to the boats descending the river, and have even plundered some of them and committed a few murders; they are attached to liquor, seldom remain long in any place; many of them speak English, all understand it, and there are some who even read and write it.

At St. Genevieve, in the settlement among the whites, are about thirty Piorias, Kaskaskias, and Illinois, who seldom hunt for fear of the other Indians; they are the remains of a nation which, fifty years ago, could bring into the field one thousand two hundred warriors.

On the Missouri.—On the Missouri and its waters are many and numerous nations, the best known of which are: The Osages, situated on the river of same name, on the right bank of the Missouri, at about eighty leagues from its confluence with it; they consist of one thousand warriors, who live in two settlements at no great distance from each other; they are of a gigantic stature and well proportioned; are enemies of the whites and of all other Indian nations, and commit depredations from the Illinois to the Arkansas. The trade of this nation is said to be under an exclusive grant. They are a cruel and ferocious race, and are hated and feared by all the other Indians. The confluence of the Osage river with the Missouri is about eighty leagues from the Mississippi.

Sixty leagues higher up the Missouri, and on the same bank, is the river Kansas, and on it the nation of the same name, but at about seventy or eighty leagues from its mouth. It consists of about two hundred and fifty warriors, who are as fierce and cruel as the Osages, and often molest and ill-treat those who go to trade among them.

Sixty leagues above the river Kansas, and at about two hundred from the mouth of the Missouri, still on the right bank, is the rivière Platte, or Shallow river, remarkable for its quicksands and bad navigation; and near its confluence with the Missouri dwells the nation of Octolactos, commonly called Otos, consisting of about two hundred warriors, among whom are twenty-five or thirty of the nation of Missouri, who took refuge among them about twenty-five years since.

Forty leagues up the river Platte you come to the nation of the Panis composed of about seven hundred warriors in four neighboring villages; they hunt but little, and are ill-provided with firearms; they often make war on the Spaniards in

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the neighborhood of Santa Fé, from which they are not far distant.

At three hundred leagues from the Mississippi, and one hundred from the river Platte, on the same bank, are situated the villages of the Mahas. They consisted in 1799 of five hundred warriors, but are said to have been almost cut off last year by the smallpox.

At fifty leagues above the Mahas, and on the left bank of the Missouri, dwell the Poncas, to the number of two hundred and fifty warriors, possessing, in common with the Mahas, their language, ferocity, and vices. Their trade has never been of much value, and those engaged in it are exposed to pillage and ill treatment.

At the distance of four hundred and fifty leagues from the Mississippi, and on the right bank of the Missouri, dwell the Aricaras, to the number of seven hundred warriors; and sixty leagues above them, the Mandane nation, consisting of about seven hundred warriors likewise. These two last nations are well disposed to the whites, but have been the victims of the Sioux or Mandowessies, who, being themselves well provided with firearms, have taken advantage of the defenceless situation of the others, and have on all occasions murdered them without mercy.

No discoveries on the Missouri, beyond the Mandane nation, have been accurately detailed, though the traders have been informed that many large navigable rivers discharge their waters into it far above it, and that there are many numerous nations settled thereon.

The Sioux, or Mandowessies, who frequent the country between the north bank of the Missouri and Mississippi, are a great impediment to trade and navigation. They endeavor to prevent all communication with the nations dwelling high up the Missouri, to deprive them of ammunition and arms, and thus keep them subservient to themselves. In the winter they are chiefly on the banks of the Missouri, and massacre all who fall into their hands.

There are a number of nations at a distance from the banks of the Missouri, to the north and south, concerning whom but little information has been received. Returning to the Mississippi, and ascending it from the Missouri, about seventy-five leagues above the mouth of the latter, the river Moingona, or rivière de Moine, enters the Mississippi on the west side, and on it are situated the Ayoas, a nation originally from the Missouri, speaking the language of the Oatachias; it consisted of two hundred warriors before the smallpox lately raged among them.

The Sacs and Renards dwell on the Mississippi, about three hundred leagues above St. Louis, and frequently trade with it; they live together, and consist of five hundred warriors; their chief trade is with Michilimakinac, and they have always been peaceable and friendly.

The other nations on the Mississippi, higher up, are but little known to us. The nations of the Missouri, though cruel, treacherous, and insolent, may doubtless be kept in order by the Uni-

ted States, if proper regulations are adopted with respect to them.

It is said that no treaties have been entered into by Spain with the Indian nations westward of the Mississippi, and that its treaties with the Creeks, Choctaws, &c., are in effect superseded by our treaty with that Power of the 27th October, 1795.

Of Lands and Titles.

The lands are held in some instances by grants from the Crown, but mostly from the Colonial Government. Perhaps not one quarter part of the lands granted in Louisiana are held by complete titles; and, of the remainder, a considerable part depend upon a written permission of a commandant. Not a small proportion is held by occupancy, with a simple verbal permission of the officer last mentioned. This practice has always been countenanced by the Spanish Government, in order that poor men, when they found themselves a little at ease, might, at their own convenience, apply for and obtain complete title. In the mean time, such imperfect rights were suffered by the Government to descend by inheritance, and even to be transferred by private contract. When requisite, they have been seized by judicial authority, and sold for the payment of debts.

Until within a few years, the Governor of Upper Louisiana was authorized to make surveys of any extent. In the exercise of this discretionary power, some abuses were committed, and a few small monopolies were created. About three years ago he was restricted in this branch of his duty, since which he has been only authorized to make surveys to emigrants in the following manner: two hundred acres for each man and wife, fifty acres for each child, and twenty acres for each slave. Hence the quantity of land allowed to settlers depended on the number in each family; and for this quantity of land they paid no more than the expense of survey. These surveys were necessary to entitle the settlers to grants; and the Governor, and after him the Intendant at New Orleans, was alone authorized to execute grants, on the receipt of the surveys from the settlers. The administration of the land office is at present under the care of the Intendant of the province.

There are no feudal rights nor noblesse.

It is impossible to ascertain the quantity of lands granted, without calling on the claimants to exhibit their titles; the registry being incomplete, and the maps made by the different surveyors general having been burnt in the fires at New Orleans, of 1788 and 1794, no estimate has been obtained.

All the lands on both sides of the Mississippi, from the distance of sixteen leagues below New Orleans to Baton Rouge, are granted to the depth of forty acres, or near half a league, which is the usual depth of all grants. Some have double and triple grants; that is to say, they have twice or thrice forty acres in depth; and others have grants extending from the Mississippi to the sea or the lakes behind them. In other parts of the country, the people, being generally settled on the banks of creeks or rivers, have a front of from six to forty

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acres, and the grant almost invariably expresses a depth of forty acres. All the lands ungranted, on the island of New Orleans or on the opposite bank of the Mississippi, are sunken, inundated, and at present unfit for cultivation; but may in part be reclaimed at a future day, by efforts of the rich and enterprising.

Cultivation of Sugar.

The sugar cane may be cultivated between the river Iberville and the city, on both sides of the river, and as far back as the swamps. Below the city, however, the lands decline so rapidly, that, beyond fifteen miles, the soil is not well adapted to it. Above the Iberville the cane would be affected by the cold, and its produce would, therefore, be uncertain. Within these limits, the best planters admit that one quarter of the cultivated lands of any considerable plantation may be planted in cane, one quarter left in pasture, and the remaining half employed for provisions, &c., and a reserve for a change of crops. One Parisian arpent, of one hundred and eighty feet square, may be expected to produce, on an average, twelve hundred weight of sugar and fifty gallons of rum.

From the above data, admitting that both sides of the river are planted for ninety miles in extent and about three fourths of a mile in depth, it will result that the annual product may amount, in round numbers, to twenty-five thousand hogsheads of sugar, with twelve thousand puncheons of rum. Enterprising young planters say that one third, or even one half, of the arable land might be planted in cane. It may also be remarked, that a regular supply of provisions from above, at a moderate price, would enable the planter to give his attention to a greater body of land cultivated with cane. The whole of these lands, as may be supposed, are granted; but in the Attakapas country there is undoubtedly a portion, parallel to the sea-coast, fit for the culture of the sugar cane. There vacant lands are to be found, but the proportion is at present unknown.

In the above remarks, the lands at Terre aux Bœuf, on the Fourche, bayou St. Jean, and other inlets of the Mississippi south of the latitude supposed to divide those which are fit, from those which are unfit, for the cultivation of the cane, have been entirely kept out of view. Including these, and taking one third instead of one fourth of the lands fit for sugar, the produce of the whole would be fifty thousand instead of twenty-five thousand hogsheads of sugar.

The following quantities of brown sugar, clayed and refined, have been imported into the United States from Louisiana and the Floridas, viz: In 1799, 773,542 pounds; in 1800, 1,560,865 pounds; in 1801, 967,619 pounds; in 1802, 1,576,933 pounds.

Of the Laws.

When the country was first ceded to Spain, she preserved many of the French regulations; but, by almost imperceptible degrees, they have disappeared; and at present the province is governed entirely by the laws of Spain, and the ordinances formed expressly for the colony. Various ordi-

nances promulgated by General O'Reilly, its first Governor under Spain, as well as some other laws, are translated and annexed to Appendix, No. 1.

Courts of Justice.

The Governor's court has a civil and military jurisdiction throughout the province; that of the Lieutenant Governor has the same extent in civil cases only.

There are two Alcaldes, whose jurisdiction, civil and criminal, extends through the city of New Orleans and five leagues around it, where the parties have no *fuero militar*, or military privilege; those who have, can transfer their causes to the Governor.

The tribunal of the Intendant has cognizance of admiralty and fiscal causes, and such suits as are brought for the recovery of money in the King's name, or against him.

The tribunal of the Alcalde Provincial has cognizance of criminal causes, where offences are committed in the country, or when the criminal takes refuge there, and in other specified cases.

The ecclesiastical tribunal has jurisdiction in all matters respecting the church.

The Governor, Lieutenant Governor, Alcaldes, Intendant, Provincial Alcalde, and the Provisor in ecclesiastical causes, are, respectively, sole judges. All sentences affecting the life of the culprit, except those of the Alcalde Provincial, must be ratified by the superior tribunal, or Captain General, according to the nature of the cause, before they are carried into execution. The Governor has not the power of pardoning criminals. An auditor and an assessor, who are doctors of law, are appointed to give counsel to those judges; but for some time past there has been no assessor. If the judges do not consult those officers, or do not follow their opinions, they make themselves responsible for their decisions.

The commandants of districts have also a species of judicial power. They hear and determine all pecuniary causes not exceeding the value of one hundred dollars. When the suit is for a larger sum, they commence the process, collect the proofs, and remit the whole to the Governor, to be decided by the proper tribunal. They can inflict no corporeal punishment except upon slaves, but they have the power of arresting and imprisoning when they think it necessary: advice of which, and their reasons, must be transmitted to the Governor.

Small suits are determined in a summary way, by hearing both parties, *riva voce*; but, in suits of greater magnitude, the proceedings are carried on by petition and reply, replication and rejoinder, reiterated until the auditor thinks they have nothing new to say. Then all the proofs either party chooses to adduce are taken before the keeper of the records of the court, who is always a notary public.

The parties have now an opportunity of making their remarks upon the evidence, by way of petition, and of bringing forward opposing proofs. When the auditor considers the cause as mature, he issues his decree, which receives its binding

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force from the Governor's signature, where the cause depends before him.

There is an appeal to Havana, if applied for within five days after the date of the decree, in causes above a certain value. An ulterior appeal lies to the Audience, which formerly sat at St. Domingo, but which is now removed to some part of Cuba; and from thence to the Council of the Indies, in Spain.

Suits are of various durations. In pecuniary matters, the laws encourage summary proceedings. An execution may be had on a bond in four days; and, in the same space, on a note of hand, after the party acknowledged it, or after his signature is proved. Moveable property is sold, after giving nine days' warning, provided it be three times publicly cried in that interval. Landed property must be likewise cried three times, with an interval of nine days between each, and it may then be sold. All property taken in execution must be appraised, and sold for at least half of the appraisement. In pecuniary matters, the Governors decide verbally, without appeal, when the sum does not exceed one hundred dollars. The Alcaldes have the same privilege, when the amount is not above twenty dollars.

In addition to these courts, four years ago there were established four Alcaldes de Barrio, or petty magistrates; one for each of the four quarters of the city, with a view to improve its police. They hear and decide all demands not exceeding ten dollars; exercise the power of committing to prison; and in case of robbery, riot, or assassination, they can, by calling upon a notary, take cognizance of the affair; but, when this is done, they are bound to remit the proceedings to some of the other judges, and, in all cases whatever, to give them information when they have committed any person to prison.

Most of the suits are personal contracts, rights to dower, inheritances, and titles to land. Those arising from personal quarrels are generally decided in a summary way. The inhabitants are said not to be litigious.

Lawyers, and Costs of the Courts, and Officers.

The number of lawyers is small, not exceeding three or four attorneys. Their fees are small. Suits are carried on in writings, called *escritos*, which may be drawn up by the parties themselves, if they please, but they must be presented by the *escribano*, or notary, who is the keeper of the records of the court.

The fees of the judges are twenty-five cents for every half signature or flourish, (which is usually affixed on common occasions); fifty cents for every whole signature; and two dollars and three-fourths for every attendance, as at a sale, or the taking of evidence.

The fees of the Abogado, or person consulted by the judges on law points, are twelve and a half cents for every leaf of which the process consists, and four dollars for every point of law cited. Those of the attorney, when employed, are sixty-two and a half cents for a simple petition, or *escri-*

to; but, if it should be necessary to read a process in order to form his petition, and it should require much time and labor, he is compensated in proportion, besides twelve and a half cents per leaf for perusing the papers. For attendance on any business, he is allowed one dollar and fifty cents for the assistance of two and a half hours. The notary has fifty cents for each decree, or order of the judge; twenty-five cents for a notification in his office; and fifty cents for one out of it, but within the city; one dollar and seven-eighths for every attendance of two and a half hours on business, and twenty-five cents additional for every leaf of paper written by him.

A counsellor or two have sometimes resided at New Orleans, but being generally found obnoxious to the officers of the Government, they have not continued there. The counsellor values his own services, and, in general, exacts large sums. The attorney generally receives from the party who employs him more than is allowed by law.

Crimes, Criminal Jurisprudence, and Punishment.

In cases of petty crimes, the cognizance of the proper court may be said to be final, and without appeal; and most commonly such causes are decided in a summary way. With respect to crimes of a deeper dye, more solemnity is used. A person skilled in the laws is always nominated by the court to defend the accused. The trial is not public; but examinations and depositions in writing are taken privately by the auditor, at any time most convenient to himself, at which, nevertheless, the counsel of the accused is admitted to be present. He has also every kind of privilege granted to him in making his defence. Such suits are generally very tedious and expensive, when he is wealthy. The condemned is entitled to an appeal, as in civil cases, provided he give security for the payment of the future costs. There appears, however, to be a virtual appeal in every capital condemnation, because a stay of execution takes place until the confirmation of the sentence returns from St. Jago de Cuba, where there is a grand tribunal established consisting of five judges, before whom counsellors plead, as in our courts.

Crimes of great atrocity are very rare. Murder, by stabbing, seems to be confined to the Spanish soldiers and sailors. The terror of the magistrate's power restrains assaults, batteries, riots, &c.

Punishments are generally mild. They mostly consist of imprisonment and payment of costs; sometimes the stocks. White men, not military, are rarely, perhaps never, degraded by whipping, and in no case do any fines go into the public treasury. Murder, arson, and aggravated robbery of the King's treasury or effects, are punished with death. Robbery of private persons, to any amount, is never punished with death, but by restitution, imprisonment, and, sometimes, enormous costs. Crimes against the King's revenue, such as contraband trade, are punished with hard labor for life, or a term of years, on board the galleys, in the mines, or on the public works.

*Description of Louisiana.**Learning.*

There are no colleges, and but one public school, which is at New Orleans. The masters of this are paid by the King. They teach the Spanish language only. There are a few private schools for children. Not more than half of the inhabitants are supposed to be able to read and write; of whom not more than two hundred, perhaps, are able to do it well. In general, the learning of the inhabitants does not extend beyond those two arts, though they seem to be endowed with a good natural genius, and an uncommon facility of learning whatever they undertake.

The Church.

The clergy consists of a bishop, who does not reside in the province, and whose salary, of four thousand dollars, is charged on the revenue of certain bishoprics in Mexico and Cuba; two canons, having each a salary of six hundred dollars; and twenty-five curates, five for the city of New Orleans, and twenty for as many country parishes, who receive each from three hundred and sixty to four hundred and eighty dollars a year. Those salaries, except that of the bishop, together with an allowance for sacristans and chapel expenses, are paid by the treasury at New Orleans, and amount annually to thirteen thousand dollars.

There is also at that place a convent of Ursulines, to which is attached about a thousand acres of land, rented out into three plantations. The nuns are now in number not more than ten or twelve, and are all French. There were formerly about the same number of Spanish ladies belonging to the order; but they retired to Havana during the period when it was expected that the province would be transferred to France. The remaining nuns receive young ladies as boarders, and instruct them in reading, writing, and needlework.

They have always acted with great propriety, and are generally respected and beloved throughout the province. With the assistance of an annual allowance of six hundred dollars from the treasury, they always support and educate twelve female orphans.

Of the Officers of Government.

The officers, who are merely judicial, have been already mentioned, and therefore some of them will be altogether omitted in this place. The executive officers, appointed by the Governor, for each division of the province, and called Commandants, are generally taken from the army, or the militia. When the settlement is small, some respectable character is appointed to the civil command, and the militia officer has the direction of military matters. Where there is a garrison, the commandant is sub-delegate of the Intendant, and draws upon him for all expenses incurred. In that case he has the charge of all matters relating to the revenue, within his district.

The duty of commandants is to superintend the police, preserve the peace of this district, examine the passports of travellers, and to suffer no stran-

gers to settle within the limits of their command, without regular leave obtained from Government. They are to prevent smuggling; to certify that all lands, petitioned for by the inhabitants, are vacant before they are granted; and, when required, to put the owner in possession. They are besides notaries public; and in their offices it is necessary to register all sales of lands and slaves, and even to make the contracts for those purposes before them. They act as sheriffs, levy executions on property, attend and certify the sale, and collect the proceeds. They also take inventories of the property of intestates. By an ordinance of Baron Carondelet, syndics are established every three leagues, who are subordinate to the commandant, decide small causes, and have the police of roads, levees, travellers, and negroes.

The officers of the General Government are the following: Besides his judicial powers, the Governor is chief of the army and militia, and the head of the civil Government. He is also President of the Cabildo, or Provincial Council. He appoints and removes, at pleasure, the commandants of districts. He appoints the officers of the militia, who are, nevertheless, commissioned by the King, and he recommends military officers for preferment. He is superintendent of Indian affairs. He promulgates ordinances for the good government and improvement of the province, but he has no power to assess taxes upon the inhabitants without their consent. Until the year 1798, he possessed the sole power of granting lands; but it then passed into the hands of the Intendant.

The Cabildo is an hereditary council of twelve, chosen originally from the most wealthy and respectable families. The Governor presides over their meetings. Their office is very honorable, but it is acquired by purchase. They have a right to represent, and even to remonstrate to the Governor, in respect to the interior government of the province. The police of the city is under their control and direction. In it they regulate the admission of physicians and surgeons to practice. Two members of the Cabildo serve by turn monthly, and take upon themselves the immediate superintendence of markets, bakers, streets, bridges, and the general police of the city. This council distributes among its members several important offices, such as Alguazil Mayor, or High Sheriff, Alcalde Provincial, Procureur General, &c. The last mentioned is a very important charge. The person who holds it is not merely the King's attorney, but an officer peculiar to the civil law. He does not always prosecute; but, after conviction, he indicates the punishment annexed by law to the crime, and which may be, and is mitigated by the court. Like the chancellor in the English system, he is the curator and protector of orphans, &c.; and, finally, he is the expounder of the law, the defender of the privileges belonging to the town, province, or colony, and the accuser of every public officer that infringes them. The Cabildo is also vested with a species of judicial authority, for which, and for a further elucidation of its constitution, and the

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functions of the officers springing from it, see the appendix No. 1.

The Intendant is chief of the departments of finance and commerce, and exercises the judicial powers already mentioned. He is entirely independent of the Governor, and no public moneys can be issued without his express order. The land office is under his direction.

The Contador, Treasurer, and Interventor, are officers subordinate to the Intendant. The first has four clerks under him, and keeps all accounts and documents respecting the receipt and expenditure of the revenue; and is, therefore, a check upon the Intendant. The treasurer is properly no more than a cashier, and is allowed one clerk. The interventor superintends all public purchases and bargains. The administrator is also subordinate to the Intendant, and, with a number of inferior officers, manages everything respecting the custom-house. Every clerk in these offices receives his commission from the King.

The Auditor is the King's counsel, who is to furnish the Governor with legal advice in all cases of judicial proceedings, whether civil or military.

The Assessor's functions are similar to those of the auditor, and are properly applicable to the Intendant's department.

Both of the officers last mentioned are also the counsellors of some of the other tribunals, as before intimated.

A Secretary of the Government, and another of the Intendancy.

A Surveyor General.

A Harbormaster.

A Storekeeper, who takes charge of all public moveable property.

An Interpreter of the French and Spanish languages, and a number of other inferior officers.

All appointments in the province, with a salary of more than thirty dollars per month, are made by the King; and most of those with a lower salary, by the Governor or Intendant, as belongs to their respective departments. There are no officers chosen by the people.

The salaries and perquisites of the principal officers are as follows:

	<i>Salary.</i>	<i>Perquisites.</i>
Governor, annually	6,000	2,000
Intendant	4,000	none
Auditor	2,000	2,000
Contador	2,000	none
Assessor	1,200	1,000
Treasurer	1,200	none
Administrador	1,200	none
Secretary of Government	600	2,000

The commandants of districts receive each one hundred dollars from the King annually, unless they are possessed of a military employment or pension.

Taxes and Duties.

Instead of paying local taxes, each inhabitant is bound to make and repair roads, bridges, and embankments through his own land.

A duty of six per cent. is payable at the custom-

house on the transfer of shipping. It is ascertained upon the sum the buyer and seller declare to be the real consideration. As no oath is required from either, they seldom report more than half the price.

The following taxes are also payable in the province:

Two per cent. on legacies and inheritances, coming from collaterals, and exceeding two thousand dollars.

Four per cent. on legacies, given to persons who are not relatives of the testator.

A tax on civil employments, the salaries of which exceed three hundred dollars annually, called *media annata*, amounting to half of the first year's salary. By certain officers it is to be paid in two annual instalments, and by others in four. The first person appointed to a newly created office pays nothing, but the tax is levied on all who succeed him.

Seven dollars is deducted from the sum of twenty, paid as pilotage by every vessel entering or leaving the Mississippi; but the treasury provides the boats, and pays the salary of the pilots and sailors employed at the Balize. The remainder of the twenty dollars is thus distributed: to the head pilot four dollars; to the pilot who is in the vessel four dollars; and five dollars to the crew of the row-boat that goes out to put the pilot on board, or take him ashore.

A tax of forty dollars per annum for licenses to sell liquors.

A tax on certain places when sold, such as those of regidor, notary, attorney, &c.

But the principal tax is that of six per cent. levied on all imports and exports, according to a low tariff. The proceeds of which net about one hundred and twenty thousand dollars, whilst all the other taxes are said not to yield more than five or six thousand dollars annually.

Expenses and Debt.

The expenses of the present Government, comprehending the pay and support of the regiment of Louisiana, part of a battalion of the regiment of Mexico, a company of dragoons, and one of artillery, which form the garrison of the country, including Mobile, the repairs of public buildings and fortifications, the maintenance of a few galleys to convey troops and stores throughout the province, Indian presents, and salaries of officers, clergy, and persons employed for public purposes, amount to about six hundred and fifty thousand dollars. A sum, in specie, which does not generally exceed four hundred thousand dollars, is annually sent from Vera Cruz; but this, together with the amount of duties and taxes collected in the province, leaves usually a deficiency of one hundred or one hundred and fifty thousand dollars, for which certificates are issued to the persons who may have furnished supplies, or to officers and workmen for their salaries. Hence a debt has accumulated, which, it is said, amounts at present to about four hundred and fifty thousand dollars. It bears no interest, and is now depreciated thirty per cent. The latter circum-

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stance has taken place not from want of confidence in the eventual payment of the certificates, but from the uncertainty of the time when, and the want and general value of specie. The whole of this debt is said to be due to the inhabitants, and to American residents. It would have been long since paid off, but for a diversion of the funds, destined for that purpose, to different and external objects.

Imports and Exports.

The productions of Louisiana are, sugar, cotton, indigo, rice, furs and peltry, lumber, tar, pitch, lead, flour, horses, and cattle. Population alone is wanting to multiply them to an astonishing degree. The soil is fertile, the climate salubrious, and the means of communication between most parts of the province certain, and by water.

The following has been received as a sketch of the present exports of Louisiana, viz:

20,000 bales of cotton, of three cwt. each, at twenty cents per pound, increasing	- \$1,344,000
45,000 casks of sugar, ten cwt. each, at six cents per pound, increasing	- 302,400
800 casks of molasses, one hundred gallons each, increasing	- 32,000
Indigo, diminishing rapidly	- 100,000
Peltry	- 209,000
Lumber	- 80,000
Lead, corn, horses, and cattle, uncertain.	
All other articles, suppose	- 100,000
	<u>2,158,000</u>

According to official returns in the Treasury of the United States, there were imported into our territory from Louisiana and Florida merchandise to the following amounts, in the several years prefixed:

In 1799, to the value of	- \$507,132
In 1800, to the value of	- 904,323
In 1801, to the value of	- 956,635
In 1802, to the value of	- 1,006,214

According to the same authority, (which makes the total of the exports to amount to two millions one hundred and fifty-eight thousand dollars,) the imports in merchandise, plantation utensils, slaves, &c., two and a half millions—the difference being made up by the money introduced by the Government to pay the expenses of governing and protecting the colony.

According to the returns in the Treasury of the United States, exports have been made to Louisiana and Florida to the following amount, in the years prefixed:

In 1799, foreign articles, to the value of	- \$3,056,268
In 1799, domestic articles, to the value of	- 447,824
Total	- <u>\$3,504,092</u>
In 1800, foreign articles, to the value of	- \$1,795,127
In 1800, domestic articles, to the value of	- 240,662
Total	- <u>\$2,035,789</u>

In 1801, foreign articles, to the value of	- \$1,770,794
In 1801, domestic articles, to the value of	- 137,204

Total - - - - - \$1,907,998

In 1802, foreign articles, to the value of	- \$1,054,600
In 1802, domestic articles, to the value of	- 170,110

Total - - - - - \$1,224,710

It is to be observed, that if the total of the imports and exports into and from these Provinces (of which the two Floridas are but a very unimportant part, with respect to both) be as above supposed, viz:

Imports	- - - - - \$2,500,000
Exports	- - - - - 2,158,000

Making together - - - \$4,658,000

The duty of six per cent. ought alone to produce the gross sum of two hundred and seventy-nine thousand four hundred and eighty dollars; and that the difference between that sum and its actual net produce arises partly from the imperfect tariff by which the value of merchandise is ascertained, but principally from the smuggling, which is openly countenanced by most of the revenue officers.

Manufacturers.

There are but few domestic manufactures. The Acadians manufacture a little cotton into quilts and cottonades; and in the remote parts of the Province the poorer planters spin and weave some negro cloths of cotton and wool mixed. There is one machine for spinning cotton in the parish of Iberville, and another in the Opelousas, but they do little or nothing. In the city, besides the trades which are absolutely necessary, there is a considerable manufacture of cordage, and some small ones of shot and hair powder. There are likewise in, and within a few leagues of the town, twelve distilleries for making taffia, which are said to distil annually a very considerable quantity; and one sugar-refinery, said to make about two hundred thousand pounds of loaf sugar.

Navigation employed in the trade of the Province.

In the year 1802, there entered the Mississippi two hundred and sixty-eight vessels of all descriptions, eighteen of which were public armed vessels, and the remainder merchantmen, as follows: Ships, 48 American, 14 Spanish; brigs, 63 American, 17 Spanish, 1 French; polacres, 4 Spanish; schooners, 50 American, 61 Spanish; sloops, 9 American, 1 Spanish. Total, 170 American, 97 Spanish, 1 French.

Of the number of American vessels, twenty-three ships, twenty-five brigs, nineteen schooners, and five sloops, came in ballast; the remainder were wholly or in part laden. Five Spanish ships and seven schooners came in ballast. The united tonnage of all the shipping that entered the river, exclusive of the public armed vessels, was thirty-three thousand seven hundred and twenty-five register tons.

In the same year there sailed from the Missis-

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Mississippi two hundred and sixty-five sail, viz: Ships, 40* American, 8,972 tons; 18 Spanish, 3,714 tons. Brigs, 58 American, 7,546 tons; 22* Spanish, 1,944 tons. Schooners, 52 American, 4,346 tons; 58 Spanish, 3,747 tons. Sloops, 8 American, 519 tons; 3* Spanish, 108 tons. Polacres, 3* Spanish, 240 tons.—Total, 158 American, 21,383 tons; 104 Spanish, 9,753 tons.

Schooners, 3 French, 105 tons.

Total American 158, tons 21,383; total Spanish 104, tons 9,753; total French 3, tons 105. Grand total 265 sail, 31,241 tons.

The tonnage of the vessels which went away in ballast, and that of the public armed ships, are not included in the foregoing account; these latter carried away masts, yards, spars, pitch, tar, &c., at least one thousand tons.

In the first six months of the present year, there entered the Mississippi one hundred and seventy-three sail, of all nations—four of which are public armed vessels, viz: two French and two Spanish, whose tonnage is not enumerated—as follows: Ships, 23 American, 5,396 tons; 14 Spanish, 3,080 tons; 5 French, 1,002 tons. Brigs, 44 American, 5,701 tons; 20 Spanish, 2,173 tons; 8 French, 878 tons. Polacres, 3 Spanish, 480 tons; 2 French, 436 tons. Schooners, 22 American, 1,899 tons; 18 Spanish, 1,187 tons; 7 French, 488 tons. Sloops, 4 American, 278 tons; 3 Spanish, 167 tons.—Total, 93 American, 13,264 tons; 58 Spanish, 7,087 tons; 22 French, 2,804 tons.

Total of American ships 93, tons 13,264; total of Spanish ships 58, tons 7,087; total of French ships 22, tons 2,804. Grand total, 173 ships, 23,155 tons.

In the same six months there sailed from the Mississippi one hundred and fifty-six vessels, viz: Ships, 21 American, 18 Spanish, 2 French; brigs, 28 American, 31 Spanish, 1 French; polacres, 4 Spanish; schooners, 17 American, 26 Spanish, 5 French; sloops, 2 American, 1 Spanish. Total, 68 American, 80 Spanish, 8 French.

Coasting Trade.

There is a considerable coasting trade from Pensacola, Mobile, and the creeks and rivers falling into, and in the neighborhood of, Lake Pontchartrain, from whence New Orleans is principally supplied with ship-timber, charcoal, lime, pitch, and tar, and partly with cattle; and the places before named are supplied with articles of foreign growth and produce in the same way from Orleans. The vessels employed are sloops and schooners—some of which are but half-decked—from eight to fifty tons; five hundred of which, (including their repeated voyages,) and thirteen galleys and gunboats, entered the bayou St. Jean last year. There is likewise a small coasting trade between the Attakapas and Opelousas, and New Orleans, by way of the Balize, which would much increase if there was any encouragement given by Government to clear away a few obstructions, chiefly caused by fallen timber, in the small rivers and creeks leading to them.

* One in ballast.

DIGEST OF THE LAWS OF LOUISIANA.

[Communicated to Congress, Nov. 29, 1803.]

*To the Senate and House of
Representatives of the United States:*

I now communicate an appendix to the information heretofore given on the subject of Louisiana. You will be sensible, from the face of these papers, as well as of those to which they are a sequel, that they are not and could not be official, but are furnished by different individuals as the result of the best inquiries they had been able to make, and now given, as received from them; only digested under heads to prevent repetitions.

Nov. 29 1803.

TH. JEFFERSON.

APPENDIX No. 1.

Don Alexander O'Reilly, Commander of Benfayou, of the Order of Alcantara, Lieutenant General of the Armies of His Majesty, Inspector General of Infantry, and, by commission, Governor and Captain-General of the Province of Louisiana.

The process which has been had in consequence of the insurrection which has taken place in this colony, having fully demonstrated the part and influence which the council have taken in those proceedings, countenancing, contrary to duty, the most criminal actions, when their whole care should have been directed to maintaining the people in the fidelity and subordination which are due to their Sovereign; for these reasons, and with a view to prevent hereafter evils of such magnitude, it is indispensable to abolish the said council, and to establish in their stead that form of political government and administration of justice prescribed by our wise laws, and by which all the states of His Majesty in America have been maintained in the most perfect tranquillity, content, and subordination. For these causes, in pursuance of the power which our Lord the King (whom God preserve) has been pleased to confide to us by his patent, issued at Aranjuez, the 16th April, of the present year, to establish in the military police, and in the administration of justice and of his finances that form of government, dependence, and subordination, which should accord with the good of his service and the happiness of his subjects in this colony: We establish, in his royal name, a city council or cabildo, for the administration of justice and preservation of order in this city, with the number of six perpetual regidores, conformably to the second statute, title 10, book 5, of the *Recopilacion des Indes*; among whom shall be distributed the offices of alferes royal, alcaid mayor provincial, alguazil mayor, depositary general, and receiver of penas de camara, or fines for the use of the royal treasury; these shall elect, on the first day of every year, two judges, who shall be styled alcaids ordinary, a syndic procureur general, and a manager of the rents and taxes of the city; such as the laws have established for good government and faithful administration of justice. And as the want of advocates in this country, and the little

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knowledge which his new subjects possess of the Spanish laws might render a strict observance of them difficult, and as every abuse is contrary to the intentions of His Majesty, we have thought it useful, and even necessary, to form an abstract or regulation drawn from the said statutes, which may serve for instruction and elementary formulary in the administration of justice and economical government of this city, until a more general knowledge of the Spanish language may enable every one, by the perusal of the aforesaid statutes, to extend his information to every point thereof. In consequence thereof, and with the reserve of His Majesty's good pleasure, we order and command the justices, cabildo, and their officers, to conform punctually to what is required by the following articles:

SECTION I.—*Of the Cabildo.*

1. The cabildo, at which the Governor shall preside, or, in his absence, the alcaid ordinary, who shall have the first voice, shall assemble at the city hotel on the first day of every year, and proceed to the election of alcalds ordinary and the other officers above mentioned; it shall also assemble every Friday, for the purpose of deliberating on all that may concern the public welfare. The syndic procureur-general shall propose in these assemblies what may appear to him for the welfare of the republic. One or two regidors shall immediately after inform the Governor, if he has not presided, of the resolutions that may have been taken; and, except in pressing cases when the cabildo for very important reasons may assemble at the Governor's dwelling, it shall not assemble in any other place than the city hotel; under the penalty, to the officers who compose it, of being deprived of their employments.

2. In urgent cases, which cannot be deferred until the usual day of meeting, the regidors may hold an extraordinary sitting; they shall be notified to that effect by one of the doorkeepers of the cabildo; and if any one of the members shall not have been notified, the resolutions which may have been taken shall, if he shall challenge the same, be void; as also in case the minority should not have been notified, even if those who have not been notified shall not object thereto. No assembly shall ever be held but by order of the Governor, and the assistants shall keep a profound silence in respect to the subject upon which the assembly may have deliberated.

3. The regidors shall have an active voice in the elections, as well as the alcalds of the preceding year, who shall remain in the cabildo until the election of their successors shall be confirmed, and they shall have been received. The alcaid, however, who, in the absence of the Governor, shall exercise the functions of President, shall not have an active voice; and so soon as the elections shall have been determined, the secretary of the cabildo shall give information thereof to the Governor, who alone may decide on the validity of the opposition made by any member to the persons elected to the municipal offices, and confirm the alcalds and other officers.

4. The office of alcaid should be given to capable persons who may have the information necessary to fill worthily a charge so important. They shall have a house in the city, and shall reside therein. Those who are employed in the militia may be named to those offices; and they may also be given to the regidors, whose employments may not be incompatible with those places.

5. The alcalds, and the other elective officers of the cabildo, cannot be continued in their employments but when all the members without exception shall have given their votes for their continuation. Without this condition, they cannot be re-elected until two years after they shall have quitted the distinguishing badge of their office.

6. Neither the officers of the finances, those who are indebted to the said finances, the sureties of either the one or the other, those who have not attained the age of twenty-six years, nor the new converts to our holy faith, can be elected to the said offices.

7. The election being confirmed by the Governor, the doorkeepers shall deliver tickets from the scrivener to the elected, notifying them to attend at the hall of the assembly, in order to take the oath prescribed by law; the form of which will be found annexed to this regulation, and to be received and put in possession of their offices.

8. The scrivener of the Government will keep a book entitled "Resolutions," in which he shall record the elections and decisions of the assemblies, ordinary and extraordinary; and which shall be signed by all the judges and members who may have assisted thereat.

9. The regidors cannot give their votes for the said offices in favor of their father, son, brother, step-father, son-in-law, step-son or step-brother, of their wives, although they may be elected by all those who shall be entitled to vote.

10. Whenever the cabildo shall deliberate upon an affair which may personally regard a regidor, or other officer of the cabildo, or even any one of his kindred, or for other particular reasons which might induce a suspicion of partiality, he shall withdraw immediately, and shall not return until the affair shall have been decided.

11. All decrees, royal provisions, and despatches, which may be addressed to the corporation either by the Governor or other authorized minister, shall be opened in the cabildo only, where they shall be recorded, and originals preserved in the archives of the said cabildo.

12. In case of the death or absence of one of the alcalds ordinary, the alferes royal shall exercise the duties of that office during the time that may be wanting to complete the year of him who may be deceased or absent: and, if two alcalds should be wanting at the same time, the other place shall fall of right to the senior regidor, provided he does not hold in the cabildo any office incompatible with that employment, as specified in the present regulation, under the heads of those several offices.

13. Whenever the regidors may assist in a body, they shall preserve the order following, as also in the cabildo, viz: the alferes royal shall take the

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first place; the alcaid mayor provincial the next; the alguazil mayor, and the other regidores according to their rank and their seniority.

14. Each regidor, according to his rank, and by turns, shall be charged with the maintenance of the municipal ordinances, and the other dispositions of government for the public good. He shall attend to the prices of provisions, exacting the fines, and putting in force the penalties incurred by the delinquents.

15. Whenever there shall be the question of augmenting the price of meat, with which this city is abundantly and constantly supplied; the cabildo, at a public bidding, shall adjudge the contract to him who shall oblige himself to furnish it on the best terms and for the greatest advantage of the public.

16. The cabildo shall have cognizance of appeals from sentences pronounced either by the Governor, or by the alcalds ordinary where the sum does not exceed 90,000 maravedis; which must be understood as extending only to causes wholly civil, for in criminal cases the appeal must be made to the superior tribunal, which His Majesty will have the goodness to appoint, in consequence of my representations to him on that subject.

17. To legalize similar appeals, the cabildo shall name two regidores, who, in quality of commissioners, and after having taken the oath, shall decide on the justice or injustice of the sentence from which an appeal is made, conjointly with the judge who may have pronounced the same. This nomination shall be made so soon as the cabildo shall be required thereto by the appellant; the form of which, and of the institution of the said appeal, will be detailed in their places.

18. In the first ordinary assembly which may be held after that for the elections of each year, the cabildo shall name two regidores to receive the accounts of the mayordome de proprios of the preceding year, of the sums which he may have received for account of the city, and of the expenditures by order of the cabildo for the objects to which those sums are destined. They shall have those accounts rendered with the greatest exactitude, and shall oblige the said mayordome to deliver up immediately to his successor the residue of the said account; the said regidores being responsible for the total thereof when the said accounts shall be settled by one of the principal officers of finance.

19. Although the application and expenditures of the proprios for the objects to which they are destined belongs to the cabildo, it cannot, even in extraordinary cases, dispose of more than 3,000 maravedis thereof; and when a greater expenditure may be necessary, the consent of the Governor must be previously obtained, without which the said cabildo cannot assign either salary or allowance upon any occasion whatsoever.

20. The electors in the two jurisdictions being responsible for the injury and detriment which the public may sustain by the bad conduct and incapacity of the elected for the administration of justice and the management of the public interests,

should have for their objects in the election of alcalds ordinary and the other officers the service of God, the King, and the republic; and, to prevent an abuse of that great trust, their choice should be directed to those persons who shall appear most suitable for those offices, by the proofs they may possess of their affection for the King, their disinterestedness, and their zeal for the public welfare.

21. The cabildo is hereby informed that it should exact from the Governors, previous to their taking possession, a good and sufficient surety and a full assurance that they will submit to the necessary inquiries and examinations during the time they may exercise their employments; and that they will pay what may be adjudged and determined in that respect. This article merits the most serious attention of the cabildo, who is responsible for the consequences which may result from an omission or neglect of exacting these securities from the Governor.

22. The offices of regidor and scrivener of the cabildo may be sold; those officers shall also be allowed to assign them in the manner prescribed by the laws of this kingdom. In acknowledgment of this favor, and in consideration of the value that these offices will acquire by the facility of assigning them, by which they will be effectively transferred from one person to another, there shall be paid into the royal treasury, for the first assignment, one-half the sum at which the said offices may be rated, and one-third of the same for every subsequent assignment thereof, exclusive of the royal custom of half annats, (receivable without any deductions in Spain;) which custom shall also be paid by the alcalds ordinary who may be yearly elected to those offices.

23. To render these assignments valid, the assigner should survive the same term of twenty days, computing from the date thereof; and the assignee should present himself to the Governor within seventy days from the date of the same, provided with an authentic act substantiating the said assignment, as likewise the above-mentioned twenty days that the assigner shall have survived the same. Should neither of those precautions be taken, the assigner shall forfeit the said office, which shall be deemed vacant to the profit of the King's demesne; and neither he nor his heirs may lay claim to any portion of the price at which the same may be sold.

24. The said assignments shall not be valid, unless made in favor of persons known to be capable, of the age of twenty-six years, and possessing the capacity and talents necessary to the common good of the republic, and worthy of the cabildo, on account of the injury which would result therefrom should those officers be deficient in these qualifications. The said assignments shall be carefully executed and preserved by a public notary of the place at which they may be made.

SECTION II.—Of the Alcalds Ordinary.

1. The alcalds ordinary shall have cognizance of all matters in dispute, either civil or criminal, between inhabitants residing within their jurisdiction, which shall extend throughout the city

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and the dependencies thereof, excepting those which may come within the cognizance of the ecclesiastical, military, or other special court.

2. The alcalds ordinary cannot interfere in the affairs of Government, which come exclusively within the jurisdiction and competency of the Governor.

3. In all matters on which the cabildo may deliberate, the alcalds ordinary, who may assist thereat, shall, during their year of office, have an equal vote with the regidores.

4. The alcalds shall appear in public with decency and modesty, bearing the wand of royal justice,—a badge provided by law to distinguish the judges. When administering justice they shall hear mildly those who may present themselves, and shall fix the hour and place of audience, which should be at 10 o'clock in the morning, at the city hotel; and for the decision of verbal causes, in the evening between 7 and 8 o'clock, at their dwellings, and in none other.

5. One of the principal objects of justice being to prevent, effectually, those disorders which take place during the night, one of the alcalds, assisted by his alguazils and the scrivener, should go the rounds of the city; and, in case a greater force should be necessary, they may not only demand it from those persons who may be present, but also from the corps-de-garde nearest thereto.

6. It is also the duty of the alcalds ordinary to keep a watchful eye upon fornication, and to punish the same, and all other public offences, conformably to the laws; of which a sufficient detail will be given herein.

7. The alcalds may hear and decide verbally in civil causes, when the demand shall not exceed twenty piasters, as also in criminal causes of little importance. They may also hear and decide verbally those which may exceed that sum, in case the parties interested shall consent thereto.

8. Causes legally brought before one of the judges, shall be continued and determined in his tribunal, and neither the Governor nor any other shall deprive him of the cognizance thereof. The Governor, however, being required thereto by the parties, may, by an order in writing, and suitable to the case, require and summon the alcald to render speedy justice, conformably to law.

9. In cases of controversy, with respect to jurisdiction, between the Governor and one of the alcalds, or between these last, where one of them may claim the cognizance of a cause instituted with the other, either by reason of the said cause having been also instituted in his tribunal, or his supposing the same exclusively within his jurisdiction, they shall draw up a *procès-verbal* of the said controversy, in which they shall set forth their pretensions in a grave and judiciary style. The case shall remain in suspense until the decision of the superior, whom they shall be bound to consult, and to whom they shall deliver an exact copy of the proceeding, unless one of the judges may give way to the claim of the other, and thereby put an end to the said controversy. If, however, in the interval of the decision, one of the judges should proceed in, or take the least cognizance of,

the aforesaid cause, he shall forfeit his claim to the same, which shall be immediately vested in the other.

10. If one of the parties pleading shall except against the alcald who may have already taken cognizance of a cause, he may not continue the same but in conjunction with the other; and, if this last should also be excepted against, he shall associate himself with a regidor, who shall take an oath to do his duty impartially, and to terminate the cause according to law, and speedily as possible. Whatever may be done by the alcald alone, after he may have been excepted against, shall be void and of non-effect. The oath taken by the party to the written act of exception, that he is mistrustful of the alcald, shall be sufficient to render the same valid; but, if the party shall purpose to exclude him entirely from the hearing of the cause, besides the aforesaid oath, he shall make known and substantiate the ground on which he relies for the support of his pretensions. If the judge should be related, even in the fourth degree, to the adverse party, or in such habits of friendship with him as to excite a suspicion of partiality, or prepossessed against the exceptor, in all these cases he shall be excluded from the hearing of the cause in controversy, which shall be committed to the other alcald.

11. Two referees appointed, one by the alcald, and the other by the exceptor, after being sworn to execute their office impartially, shall determine whether the case be of the nature before mentioned; and, if of the said nature, they shall exact the entire exclusion of the alcald therefrom; and, if a difference should arise between the referees, a third, named by the judge, shall decide therein; which decision shall be indispensably binding.

12. The diversity of cases not permitting a special detail of the forms of proceeding therein, the alcalds shall be guided by the formulary hereunto annexed; and shall consult with the counsellor, to be appointed for that purpose, upon all doubtful cases which may occur in their practice, or which may not be provided for by the said formulary; and shall approach, as nearly as possible, to the spirit of our laws for the administration of justice.

13. The alcalds ordinary, accompanied by the alguazil mayor, and the scrivener, shall, every Friday, make the visitation of the prison. They shall examine the prisoners, the causes of their detention, and the time of their imprisonment. They shall release the poor who may be detained for their expenses, or for small debts; and the jailer shall not exact from them any releasement fee. The alcalds may not set at liberty any of the prisoners detained by order of the Governor, or of any other judge, without their express consent.

14. They may not release those who are imprisoned for debts due to the domain; nor for fines imposed by law, unless the sum due shall be previously deposited.

15. The Governor, with the alcalds, the alguazil mayor and the scrivener, shall, yearly, on the eves of Christmas, Easter, and Pentecost, make a

general visitation of the prisons, in the manner prescribed by the laws of the Indies. They shall release those who have been arrested for criminal causes of little importance, or for debts, when the debtors are known to be insolvent; and shall allow them a sufficient term for the payment of their creditors.

SECTION III.—*Of the Alcald Mayor Provincial.*

1. The regidor alcaid mayor provincial shall bear the rod of justice, and shall have cognizance of crimes committed in the inhabited places without the cities and villages. Thefts, robberies, carrying away of property by force, rapes, as also treason, malice, accompanied by wounds, or followed by death, setting fire to or burning down of houses or crops, and other crimes of this nature, shall be within the competency of the said alcaid mayor provincial.

2. He may also take cognizance of the aforesaid crimes although committed in cities, when the offenders have quitted the same, and have withdrawn to the country with their plunder; as also of murders or assaults committed on their officers while in the exercise of their duties, or in the interval thereof, if the same are the effect of malice. If, however, the Governor, or one of the judges ordinary of the city, shall have previously taken cognizance thereof, the alcaid mayor provincial shall not interfere therein, by reason that the jurisdiction of the same is vested in the alcaid ordinary. The judge, however, who shall have apprehended the offender, shall have the preference therein, even if the others should have preceded him.

3. Whenever it shall be known that the crime does not concern the tribunal of the St. Hermandad, the alcaid mayor provincial shall refer the cognizance of the same to one of the alcalds ordinary, without waiting until he may be required thereto.

4. The alcaid mayor provincial shall see that travellers are furnished with provisions at reasonable prices, as well by the proprietors of plantations as by the inhabitants of the places through which they may pass.

5. The principal object in the institution of the tribunal of the St. Hermandad being to repress disorders, and to prevent the robberies and assassinations committed in unfrequented places by vagabonds and delinquents, who conceal themselves in the woods and attack travellers and the adjacent inhabitants, the alcaid mayor provincial should assemble a sufficient number of the commissaries or brothers of the St. Hermandad to clear his jurisdiction of those kinds of people, by pursuing them with spirit, seizing them or putting them to flight.

6. For the purpose aforesaid, and conformably to the usage of the other India provinces within the dominions of His Majesty, the alcalds mayors provinciaux, their commissaries, and the brothers of the St. Hermandad, shall have the right of arresting, either within or without the city, all runaway negroes and fugitives, and may exact a reasonable fee therefor; which right shall not be

vested in any other person save the master of the fugitive slave.

The said fee is so much the more just, inasmuch as the alcaid mayor provincial, to comply with his duty, must, at his own expense, travel through the unfrequented places, for the benefit of the inhabitants.

7. The said officer shall render speedy justice in all matters within his competency; and from his judgment there shall be no appeal; otherwise it would be impossible to remedy the injurious consequences that would result therefrom. But, on the other hand, his judgments shall be pronounced in strict conformity with the spirit of the laws, to which end he shall consult some lawyer; but, in the interim, he shall be guided by the instructions herein contained, which relate to the administration of justice and the forms of proceeding.

8. This office of the Hermandad being created with a view to prevent those disorders which may be committed in unfrequented places, the alcaid mayor should make frequent excursions from the city. This duty consequently renders his employment incompatible with that of alcaid ordinary, to which he cannot be elected, unless he shall have previously obtained permission of the King, to commit to a lieutenant, appointed by himself, the duties of the St. Hermandad.

9. The said officer and his lieutenants should take an oath of the form annexed to this abridgement; he shall account to the Governor for the appointments he may have made, and shall notify him of the judgments he may have pronounced, to the end that the same may be put into execution. Although this formality is not prescribed by any law, yet it is necessary for the purpose of preserving harmony and subordination, and for the facility of procuring assistance.

10. In all controversies, with respect to jurisdiction, which may occur between the tribunal of the St. Hermandad, and any other tribunal of the province, the parties shall conform punctually to the instructions which have been given in the particular article which relates to the alcalds ordinary. The instructions which have been given in relation to exceptions against judges, should also be strictly followed, as no alteration should take place on that subject between these officers.

SECTION IV.—*Of the Alguazil Mayor.*

1. The alguazil mayor is an officer charged with the execution of sentences and judgments rendered, as well for payments ordered, taking possession of goods for sale, and imprisonments, as for the punishment of crimes. He cannot be elected alcaid ordinary, unless he shall have appointed a lieutenant to discharge his duties, in the manner prescribed to the alcaid mayor provincial.

2. Recovery of moneys upon writs of execution, orders for taking possession of goods, and seizures of real property, shall be carefully executed by the alguazil mayor, taking the fees allowed by law, and fixed by the tariff included in the present regulation.

3. The alguazil mayor shall also have the super-

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intendence of the prisons, shall commission the jailers and keepers of prisons, after having presented them to the Governor, that he may judge of their capacity for those offices, under the penalty of being deprived, for one year, of the right of nominating the same; which shall, for that term, be vested in the Governor. All the jail fees which the prisoners may pay shall be for the use of the alguazil mayor.

4. The said officer cannot appoint as lieutenants any persons but such as are known to be suitable for those employments, who are young, and do not exercise any mechanical profession; they shall be presented to the Governor, and approved by him, and shall take the oath required. The alguazil mayor may not appoint to the said office either the relations or domestics of the judges and officers, but he shall be allowed to change the said lieutenants when he may have just reasons therefor.

5. The alguazil mayor and his lieutenants shall go the rounds, and shall visit the public places, both by night and day, to prevent noises and disputes, under the penalty of being suspended in their offices, and payment of the damages that result from their negligence. They shall arrest, without other authority, the offenders, and shall give immediate information thereof to the alcalds. They shall not tolerate unlawful games, nor public and scandalous offences. They are also hereby informed that, although they have the power of arresting any one without other authority, they may not release the same, under the penalty of being deprived of their offices, and of being declared incapable of holding any other.

6. The alguazil mayor shall conform strictly to the articles which relate to the prisons, and to the tariff which specifies the fees which are demandable. He shall also assist with the judges ordinary in the visitations of the prisons, which shall be made at times prescribed by this regulation.

SECTION V.—Of the Depositary General.

1. The depositary general, whose duties are incompatible with those of a judge, cannot be elected alcaid ordinary, unless he may name a lieutenant, who may be charged with the care of the deposits.

2. Before entering upon the said office, the depositary general shall give good and sufficient sureties, who shall answer for the safety of the deposits, and who shall be approved by the Governor, alcalds, and the cabildo. This warranty shall be recorded in the book to be kept by the scrivener of the cabildo for the recording of the deposits, in which he shall inscribe the day, month, and year of the said warranty.

3. The Governor, the alcalds, and the cabildo, shall carefully examine the books which exhibit the sureties of the depositary general, the state of his property, and that of the said sureties, which shall be certified by the scrivener of the cabildo, in order that the same may be verified the succeeding year, and the necessary order taken thereon.

4. If, by the said examination, it shall be found that the situation of the depositary general, or of his sureties, be such as to excite apprehension, they shall prevent him from exercising the duties of his office until he shall have rendered his accounts, and given a better security.

5. The depositary general shall deliver on the first order the sums which may have been deposited with him, in the same coin in which he received them; to which the judges, and other officers competent thereto, should pay particular attention.

6. The depositary general shall record the deposits in a book similar to that of the scrivener of the cabildo; he shall receive for the same, and for deposit fees, three per cent., as explained in the commission which he has received for the exercise of his office.

SECTION VI.—Of the Receiver of Fines.

1. The receiver of fines (whose duties are incompatible with those of alcaid ordinary) shall have cognizance of all matters in relation thereto, as also of those imposed by the judge, of which last he shall keep and render an account, having for that purpose a book similar to that kept by the scrivener for the same object, in which they shall be entered according to date.

2. For the security of the balance of the account rendered by the receiver of fines, he shall give good and sufficient sureties, in the same manner as the depositary general. Examination shall yearly be made into the situation of the said sureties, which shall be changed if become less substantial.

3. To the end that the receiver may fully discharge the duties of his office, and a certain knowledge be acquired of the funds in his possession, the scrivener, in whose presence the fines will have been laid, shall advise the scrivener of the cabildo of the same, who shall enter them in a book, the leaves of which shall be marked by the Governor. After which the scrivener of the cabildo shall inform the receiver thereof, who, by these means, will at once perceive the amount of the sums which he should receive; and the book of the cabildo will serve to make him render an account of the sums which are entered therein.

4. The receiver of fines cannot employ the proceeds thereof without the order or permission of His Majesty, by reason that the same being the property of His Majesty cannot be removed without his approbation. He shall dispose of that portion of them only which have been imposed by the judges in conformity to the orders he may receive, and not otherwise.

5. The receiver shall discharge, out of the aforesaid portion of fines, the drafts which may be drawn by the Governor, the alcalds, and the other judges, who shall restrain themselves to the sums which may be necessary.

6. The said receiver shall render a yearly account of the sums he may have received and paid in the execution of his office. His account shall be settled by the officers of finance appointed thereto in this province.

7. He shall be allowed a commission of ten per cent. on all sums which may be recovered and received by himself, or by those commissioned by him, for the recovery thereof.

SECTION VII.—Of the Procureur General.

1. The procureur general of the republic is an officer appointed to assist the public in all their concerns, to defend them, pursue their rights and obtain justice, and to pursue all other claims which have relation to the public cause.

2. In consequence thereof, the procureur general, who is appointed solely for the public good, shall see that the municipal ordinances are strictly observed, and shall endeavor to prevent every matter or thing by which the said public might suffer.

3. For these purposes he shall apply to the tribunals competent thereto, for the recovery of debts and revenues due to the city funds, in quality of attorney for the city. He shall pursue causes with the activity and diligence necessary to discharge him from the responsibility in which he would be placed by the slightest omission.

4. He shall see that the other officers of the council or cabildo discharge strictly the duties of their offices; that the depositary general, the receiver of fines, and all those who are to give sureties, shall give such as are good and sufficient, and in case of decadency therein, he shall demand the renewal thereof, conformably to law.

5. He shall be present at, and shall interpose in, the division of lands, and other public matters, to the end that nothing unsuitable or injurious may occur in the distribution of the same.

SECTION VIII.—Of the Mayordome des Propres.

1. The mayordome des propres shall have the management of, and shall receive all that is comprised within the denomination of city funds; he shall give receipts to debtors, and shall record all sums which he may receive, as also the expenditures he may make for account of the cabildo, in order that he may be able to render his accounts so soon as his year of office shall expire.

2. He shall discharge the drafts of the cabildo, upon the rents of the city, and none other. He shall abstain from furnishing or lending any sums to any individual whomsoever, under the penalty of being responsible therefor, and of being declared incapable of holding any office under the republic.

3. The construction and keeping in repair of bridges, within and without the city, shall not be defrayed out of the city funds; this expense shall be borne by those who shall enjoy the benefit thereof, amongst whom the same shall be proportioned in the manner pointed out by stat. 1, tit. 16, book 4, of the Recopilation des Indes.

4. When any public work shall be undertaken, either by the cabildo or by individuals, care shall be taken that the same may be substantial and durable. A regidor shall be named for that purpose who, without any requital, shall inspect the said undertaking.

5. The expense of public mourning for the royal family shall be defrayed from the city funds,

with all the economy which the cabildo can adapt to these circumstances.

SECTION IX.—Of the Scrivener of the Cabildo.

1. This officer shall preserve in his archives all the papers which may concern the cabildo, or its proceedings. He shall inscribe in a book all the securities and deposits which have relation to the depositary general; and, in another book, those which relate to the receiver of fines. He shall, also, keep a third book for guardians and theirs sureties, ordinary and extraordinary, in which he shall also record the patents and commissions by His Majesty, and shall take care to preserve the originals in the archives of the cabildo.

2. The scrivener of the cabildo shall never suffer any paper or act to be removed from his archives, and if the judges should be obliged to have recourse to the same, he shall furnish them a correct copy thereof, but shall never part with the original.

3. The said scrivener of the cabildo, and of the Government, shall note, at the foot of all acts and instruments of writing, and copies of the same which he may deliver, the fees which he may receive therefor, under the penalty of forfeiting the same, and of incurring the other penalties established, to prevent him from exacting more than is allowed by the tariff.

4. The scrivener of the cabildo, and of the Government, shall inscribe, in a separate book, the mortgages upon all contracts which may be made before him or any other; he shall certify at the foot of each deed, the charge or mortgage under which the sale or the obligation may have been made, conformably to the intention of the law, in order to prevent the abuses and frauds which usually result therefrom.

5. The regidors, the scrivener, and all those who may succeed to any of the venal offices established by the India laws, are hereby informed that the royal ordinances require that, within the term of five years, computing from the date of their commission, they must obtain His Majesty's confirmation, and present the same to the governor of the city or province in which they reside, under the penalty of being deprived of the said offices.

SECTION X.—Of the Jailer and the Prisons.

1. The jailer shall be appointed by the alguazil mayor, and approved by the Governor, before entering on the duties of his office. He shall also be presented to the cabildo to be received, and to take an oath to discharge faithfully the duties of the said office, to guard the prisoners, and to observe the laws and ordinances established in this respect, under the penalties therein declared.

2. The said jailer may not enter upon the duties of the said office until he shall have given good and sufficient sureties in the sum of two hundred piasters, which surety shall warrant that no prisoner detained for debt shall be released without an order from the judge competent thereto.

3. The jailer shall keep a book in which he

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shall inscribe the names of all the prisoners, that of the judge by whose order they have been arrested, the cause for which they are detained, and the names of those who may have arrested them. He shall reside in prison, and for each considerable fault committed by him he shall pay sixty piasters, applicable one-half to the royal chamber, and the other to the informer.

4. It is the duty of the jailer to keep the prison clean and healthy, to supply it with water for the use of the prisoners, to visit them in the evening, to prevent them from gaming or disputing, to treat them well, and to avoid insulting or offending them.

5. It is likewise the duty of the jailer to take care that the female prisoners are separate from the men; that both of them are kept in their respective apartments, and that they are not worse treated than their offence deserves, or than is prescribed by the judges.

6. With respect to his fees, the said jailer shall confine himself strictly to those which are established; he shall take none from the poor under a penalty of the value of the same. He may not, without incurring the same penalty, receive any gratification either in money or goods. He shall avoid entirely either playing, eating, or forming any intimacy with the prisoners, under the penalty of sixty piasters, applicable one-third to the royal chamber, one-third to the informer, and the remaining third to the poor prisoners.

Form of the oath to be taken by the Governors, the Alcalds, and the other Judges, when taking possession of their offices.

Don N., elected governor, or alcaid, &c., (according to the employment or office,) I swear before God, the holy cross, and the evangelists, to uphold and defend the mystery of the immaculate conception of our lady the Virgin Mary, and the royal jurisdiction to which I am attached by my employment. I also swear to obey the royal ordinances and the decrees of His Majesty, faithfully to discharge the duties of my office, to decide according to law in all cases which may come before my tribunal; and for the more certain attainment thereto, I promise to consult with such as are well informed in the law, whenever opportunities may occur in this city; and, lastly, I swear that I will never exact other fees than those fixed by the tariff, and that I will never take any from the poor.

Instructions upon the manner of instituting suits, civil and criminal, and of pronouncing judgments in general, in conformity to the statutes of the *Recopilacion de Castile and des Indes*, for the government of the judges and parties pleading, until a more general knowledge of the Spanish dialect and more extensive information upon those statutes may be acquired: digested and arranged by Doctor Don Manuel Joseph de Urrustia and the counsellor Don Felix Rey, by order of his Excellency Don Alexander O'Reilly, Governor and Captain General of this Province by special commission of His Majesty.

SECTION I.—Of Civil Judgments in General.

It must, in the first place, be observed that in

causes civil or criminal, of any nature whatsoever, persons belonging to any religious order may neither appear, nor make any demand without the permission of their superior. This permission is equally necessary to the son, whose father be living, and whose consent must be obtained; to the slave, who may not act without the consent of his master; to the minor, who must be authorized by his guardian, who may be chosen by himself at the full age of fourteen years, or appointed by the judge, when of an age less advanced; to the wife, who must obtain the permission of her husband; and, lastly, to lunatics and idiots, who must be represented by the guardian appointed by law to the care of their persons and property.

2. It must also be observed that the consent of the father is not necessary to the son, when pleading in his own name for the recovery of property or rights acquired by his services in war, which are styled *castrenses*, or by particular gratification from the prince; or, lastly, of those he may have acquired by some public employment, which are styled *quasi castrenses*. But in the case where the son shall demand a maintenance, or wish to be emancipated from his father, he shall previously obtain the permission of the judge, by reason of the consideration and great respect due to a father or other superior. The slave is also allowed the same course of proceeding towards his master, if the latter, in the exercise of his authority, shall exceed the bounds prescribed by law; in which case the slave is entitled to require either his liberty or to be sold. The wife may, also, without the consent of her husband, require her dowry, if he shall be on the point of squandering the same; or an alimony, in the case of separation or ill-treatment.

3. He who may purpose to institute an action at law for a sum exceeding one hundred livres, shall commence the same by a petition setting forth the fact, and the motives upon which he proceeds; he shall also specify whether his demand be for the proceeds of some sale, for money lent, or other similar claim, with every circumstance necessary to the elucidation of the case, and for the information of the judge. He shall conclude by requiring either the return of the money, if lent, or the payment of his demand, and the condemnation of the adverse party to the payment of costs, if he shall unjustly maintain the contrary.

4. The said petition shall be signed by the party or by his proxy, and shall then be presented to the judge, who shall cause the same to be presented to the party against whom the demand may be made, which proceeding shall have the validity of a citation. The defendant shall make his defence within nine days, computing from the day on which he may have been notified of the demand. He shall draw up a counter-declaration in answer thereto, which shall contain such arguments as tend to defeat the claim of the adverse party, if the same be not indisputable, and shall make his defence in the manner observed by the plaintiff in his introductory petition.

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5. If the defendant does not answer within nine days, the plaintiff shall require judgment by default, by a writing setting forth that the delay has expired; and moving that, no answer having been made, the defendant be condemned by default; and that, consequently, his claim be reputed acknowledged and sufficiently established.

6. If, on the contrary, the defendant shall answer within the nine days, and shall allege that he is not bound to defend the suit as to the merits thereof, by reason that judgment in the case is not within the competency of the judge who has taken cognizance of the same, that the plaintiff cannot plead in his own name, that the term of his engagement has not yet expired, or other similar exceptions, communication thereof shall be made to the plaintiff that he may reply, within six days, thereto. Upon his replication the judge shall decide whether the cause shall be defended as to the merits thereof; in which case, without admitting an appeal, the said cause shall be tried on the merits thereof.

7. But if the defendant, without producing any similar exception, shall set forth pleas tending indirectly to admit the demand, as, by alleging that the thing demanded has not become due, that the same has been already paid, or any other pleas, supported by vouchers, which may be admitted before the putting of the cause to issue, the effect of which pleas would discharge him from the demand, the same shall be communicated to the plaintiff, to reply thereto: a copy of which reply shall be delivered to the defendant for a rejoinder to the same; after which, the judge shall require the documents, and shall proceed to give judgment.

8. If the fact contested should be admitted to proof, as being doubtful, the same shall be determined within eighty days, at furthest; during which delay the parties shall furnish their proofs, and shall summon each other reciprocally to attend to the administering of the oath to the witnesses.

9. The testimony of the witnesses shall be so secretly given that neither of the parties shall have knowledge of the depositions of his own witnesses, nor those of the adverse party. The term to which the cause may have been continued having expired, one of the parties shall move that by reason of the said expiration the testimony of the witnesses be made public. This motion shall be communicated to the other party, who shall consent thereto, or if he shall not reply to the same, he shall be condemned by default, in the manner observed when one of the parties does not reply to the plea of the other. The judge shall order the publication of the said testimony, and the delivery thereof to the parties; observing that the same be first delivered to the plaintiff, that he may, if necessary, strengthen the same.

10. The testimony being made public, should the plaintiff find the witnesses of the defendant inadmissible, as being either his enemies, or the intimate friends or relations of the defendant, or for other causes which may weaken the faith which would otherwise be due to their testimony, he shall draw up a declaration in which his ex-

ceptions shall be specified, after taking an oath that he has no intention of offending them; which oath shall be notified to the defendant, who may in reply state his exceptions to the witnesses of the plaintiff. The said exceptions shall then be put to the proof, and forty days may be granted therefor: one-half of the term allowed for the decision of the principal cause.

11. When the term allowed for the admission to proof of the exceptions shall have expired, the publication of the testimony, as in the principal cause, shall not be allowed; but the documents shall be delivered to the plaintiff, that he may set forth his proof; and if he shall establish that the same is more complete than that of the adverse party, a copy thereof shall be given to the defendant, upon whose reply, or in default thereof, the judge shall declare the controversy determined. He shall then order that the parties be summoned for the final decision, which must be given within twenty days, computing from the day on which he may have required the documents in the cause. He shall attentively examine the said documents, and determine the suit by condemning the debtor to payment, or by discharging him from the demand, according to the merits of the case.

12. If judgment be given for a sum not exceeding ninety thousand maravedis, an appeal to the *cabildo* may be made within five days, computing from the day on which the parties may have been notified of the sentence. If the judgment given be for a greater sum, an appeal shall be made to the tribunal to be appointed by His Majesty, in consequence of the representations which have been made to him on that subject. A brief explanation of the manner in which this recourse may be had, will be given at the conclusion of these instructions.

13. If no appeal shall be lodged within the five days allowed, the party who may have obtained judgment in his favor, shall draw up a writing, by which he shall move that no appeal having been made within the legal delay, the judgment be considered definitive; and that, in pursuance thereof, execution be ordered; a copy of which shall be given to the adverse party; and on his reply, or in default thereof, the judge shall pronounce both on the validity of the judgment and the expiration of the delay; after which he shall order that the sentence take effect and be put into execution.

SECTION II.—Of Executions.

1. When a debt shall be fully established, and importing a confession of judgment, as by an agreement, or obligation made before a notary; by a simple note, legally acknowledged by the drawer; by confession of judgment, although without any written title from the debtor; by a definitive sentence of the court, or by the cash-books of the debtor acknowledged by him; in all these cases the creditor shall draw up a declaration setting forth his claim and his action, annexing thereto the document which entitles him to a writ of execution, and moving that, by virtue of the said document, a writ of execution be granted him for the sum due, as also the tenth, and the

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costs which may be allowed. He shall observe that his declaration contains the oath that the sum demanded is due, and ought to be paid by the debtor.

2. The judge shall examine if the document which entitles the creditor to a recovery imports a confession of judgment; and if such be the case, he shall order immediate execution, by addressing an order in writing to the alguazil mayor, directing him to summon the debtor to pay the demand, or, in default thereof, his property shall be seized to the value of the same, with the tenth and the costs.

3. By virtue of the said order the alguazil mayor shall summon the debtor; if he complies, the execution shall cease. If otherwise, his property shall be seized, and held in custody by the depositary general, unless he shall give good and sufficient security for the payment of the sum in which he is condemned by the sentence. But if he shall not give the security aforesaid, or if he has not property sufficient, he shall be imprisoned, unless exempted therefrom by the privilege of nobility, which is also enjoyed by the military, regidors, officers of finance, women, lawyers, physicians, and other distinguished persons. The alguazil mayor shall note, at the foot of the writ, his proceedings thereon, as also the day and hour of the same.

4. The property being seized, the creditor shall, by another writing, move that the same be valued by two capable persons, on whom the parties may agree, and that public notice be given that the sale thereof will be made after the usual delay, according to the nature of the property. The said delay shall be of nine days' duration for personal property, with a public notice every three days; and of thirty days' duration for real property, of which notice shall be given every nine days; but, if the debtor shall consent, the said notices need not be given.

5. The said term being expired, and public notice being given, the creditor shall require that the debtor be definitively summoned to make opposition, and prove that the sum demanded is not due, or has already been paid. In pursuance thereof the debtor shall be definitively summoned, if he has not previously opposed, which he might do during the time of seizure, or of his detention in prison.

6. If the debtor shall not make opposition, within three days, computing from the day on which he may have been definitively summoned, he shall be attached by default; but if he shall make opposition, he shall be ordered to prove his exceptions within ten days at furthest, which shall be common to both parties, to prove the justice of their pretensions in the manner which to them may seem best.

7. During the said delay, the proof offered by the two parties shall be received, and they shall cite each other reciprocally to attend at the administering of the oath to the witnesses, in conformity to the provision of section I, Nos. 8 and 9, for civil judgments in general; with this difference, however, that the said delay may be prolonged at

the request of the creditor, and in which case, the debtor shall enjoy the benefit of the said prolongation.

8. The term allowed having expired, no further proof shall be allowed, save the confession of the party; and the documents shall be returned to the creditor that he may set forth his right, of which a copy shall be given to the debtor. Upon his reply, or in default thereof, the judge shall require the documents, and shall proceed to give judgment.

9. He shall examine with attention if the exceptions made by the debtor are just, and more fully established than the claim of the plaintiff; and, if such be the case, he shall discharge him from the demand instituted against him. He shall order the restoration of his property, and shall condemn the plaintiff to the payment of costs.

10. If, on the contrary, the debtor has not proved his exceptions, and the sum demanded be found legally due, the judge shall declare the seizure to be valid, and shall order the fourth and last public notice of the sale to be given, and the adjudication of the property to the highest bidder, that, from the proceeds of the same, the demand of the creditor may be fully discharged, as also the tenth and the costs. The creditor, shall, however, be held to give security in the amount of the sum, lest the sentence should be annulled by a superior tribunal.

11. This sentence shall be carried into execution notwithstanding appeal, but shall not prevent the party who may have been aggrieved, from appealing to the *cabildo*, provided the sum does not exceed 90,000 maravedis;* otherwise the appeal must be made to the superior tribunal, to be hereafter appointed by His Majesty.

12. Definitive judgment being pronounced, the day for the fourth and last notice of the sale of the property seized shall be appointed. On the said day the sale shall be made in the presence of the parties, who shall be legally summoned to attend; and the amount of his demand shall be paid to the creditor, who shall give the security aforesaid; the tenth shall be paid to the alguazil mayor, and the costs and expenses to the other officers, in conformity to the regulations of the tariff.

13. It must be observed, that, if the debtor discharges his debt within seventy-two hours after the seizure is pronounced to be valid, the tenth shall not be demanded; but in default thereof, the payment of the same may not be dispensed with; and on this account it has been heretofore declared indispensably necessary to note the day and the hour of the proceedings in the seizure.

SECTION III.—Of Judgment in Criminal Causes.

1. When information shall have been obtained of any crime, such as homicide, robbery, &c. having been committed, if no prosecutor shall appear, the judge shall officially draw up a *procès-verbal*

* The 90,000 maravedis, mentioned both in the regulations and in the present instructions, make 339 pisters, 7 reals, and 2 maravedis, equal to 1654 livres, 7 sols, 9 deniers.

containing the knowledge he has acquired of the said crime, and shall order an inquiry to be made into the circumstances of the same; as, for example, in the case of homicide, he shall cause the body to be examined by one or more surgeons, who shall declare whether the wounds have been mortal or otherwise; they shall set forth in what place and in what situation the body was found, and with what instrument it may appear that the crime has been committed. In the case of robbery, an examination shall be made, and the scrivener shall detail and certify the marks of violence on the house or the furniture, indicating that the said crime has been committed. The same statement of facts shall also be made in all other crimes; a formality which is the basis of judicial proceedings, and without which the criminal cannot be prosecuted. The judge shall, at the same time, order that the information be taken and the witnesses heard.

2. When the party injured shall bring forward a complaint, he shall commence by a petition, containing a correct and brief exposition of the fact, and requesting an examination into the circumstances of the crime, in the manner before-mentioned, and also that a summary inquiry may be made into the truth of the facts set forth in his petition. The judge shall take order on the said petition in the following words: "Be it done as is required."

3. The judge shall make the said inquiries in person, unless unavoidably prevented; in which case he may intrust the same to the Register. If, however, the crime be established, and the criminal unknown, every inquiry, search, and examination necessary to obtain a knowledge of the said criminal shall be made.

4. When the inquiries have been made, and the criminal be known, if two witnesses appear, or one witness of credit, joined to other circumstances indicative of the aggressor, the judge shall direct the body of the said aggressor to be taken into custody, as also an inventory of his property to be taken, and the sequestration of the same in the hands of the depositary general.

5. If the criminal has not been arrested, by reason of either absence or concealment, the judge shall direct that, as by the report of the alguazil the said criminal has not been arrested, he be cited by public proclamation, three times repeated, in the manner following:

6. The accused shall first be cited to appear and deliver himself up within nine days; in default of which, the judge shall direct the scrivener to certify that the term has expired, and the jailer to affirm that the offender has not appeared. In consequence of the said certificates, which shall be annexed to the documents in the cause, the accused shall be condemned to the penalty of contumacy; and the judge shall direct that he be again cited to appear within the aforesaid term of nine days. On the expiration of this second delay the scrivener and jailer shall certify as before; after which the judge shall issue an order for his arrest, and direct the publication of the same, as also the continuance of the proclamation afore-

said. These last nine days being expired, the scrivener shall again certify thereto, and the jailer shall affirm that the accused has not appeared at the prison. The judge shall then declare him fully convicted of contumacy; and if there be no prosecutor, a procureur fiscal shall be appointed to take the necessary steps in the case; but if there be a prosecutor, the cause shall be committed to him that he may proceed therein as he may think best, and to bring the same before the tribunal, in which provisional judgments are given, and the criminal is cited as if he was present. The proceedings shall then be continued until the definitive sentence either in favor of or against the accused be pronounced.

7. If, however, previous to, or after the sentence, the accused shall present himself at the prison, the cause shall be instituted anew, and the defence of the accused shall be heard with attention; and upon what the prosecutor or the procureur fiscal may set forth in opposition thereto, the previous sentence shall be either confirmed or annulled, according to the documents reproduced on the trial.

8. If the criminal be taken after the order for his arrest has been issued, and the *procès-verbal* concluded, the judge shall direct the jailer to certify that the accused is in prison, and the said judge shall, in person, commence the examination by demanding his name, age, quality, profession, country, and residence. If he be under twenty-five years of age, he shall be enjoined to choose a guardian; and, upon his refusal to do so, the judge shall appoint some one thereto, by reason that the said examination cannot proceed without the presence and authority of the said guardian.

9. In the said examination the judge shall charge the accused with the crime, pursuant to the testimony given, and shall start such questions as may tend to the disclosure of the circumstances of the same.

10. The examination concluded, the witnesses, both for and against the accused, shall be heard within the shortest delay possible; which, however, if necessary, may be extended to eighty days, as allowed in civil causes in general. During this delay, the accused on one side, and the prosecutor, or the procureur fiscal, (in default of a prosecutor) on the other, shall produce their proof in the manner provided in civil causes; and although these proofs should be private, as also the re-examination of the witnesses, they may communicate to each other the documents in the cause in order to the necessary arrangement of their proceedings.

11. The witnesses being re-examined, and the delay allowed having expired, one of the parties shall require that the testimony be made public. This demand shall be communicated to the other party, by a copy thereof, upon whose answer, or in default thereof, the judge shall direct the publication of the said testimony. The documents shall then be delivered to the prosecutor, or to the procureur fiscal, that he may bring his accusation in form, and allege the sufficiency of the proof.

12. The accusation being made, conjointly

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with the declaration of the sufficiency of the proof, a copy thereof shall be given to the accused, that he may in defence set forth whatever he may think in favor of his case. When the said defence shall have been made, the pleadings shall be considered as concluded, and, consequently, the cause in a state to be determined.

13. If it shall happen that one or both of the parties except against the witnesses produced, they shall proceed in the manner pointed out under the head of civil causes in general, and shall conform precisely to the instructions therein given for similar cases. After the decision on the said exceptions has been made, the determination of the cause shall not be delayed; but the judge shall require the documents, and cite the parties for the definitive sentence.

14. The accused being convicted of the crime, as being fully established on the trial, or by some other proof, in conjunction with his own confession, he may be condemned to the penalty provided by law for the same. The said condemnation shall also take place when two witnesses of lawful age and irreproachable character shall depose that of their certain knowledge the accused has committed the crime; but when there shall appear against the accused but one witness, and other indications of conjectures, he may not be condemned to the penalty provided by law; but some other punishment shall be inflicted as directed by the judge, with due consideration of the circumstances which may appear on the trial; this state of things requires the greatest circumspection, as it must always be remembered that it is better to let a criminal escape than to punish the innocent.

15. After all these precautions, the judge shall pronounce sentence; and although in criminal causes an appeal should be admitted, yet if the judge shall have doubts, or from some difficulties on the trial he shall think it advisable to submit the same to the examination of a superior, execution shall be suspended, and this second instance shall be conducted as in civil causes.

SECTION IV.—Of Appeals.

1. When judgment has been given for a sum or an object, the value of which shall exceed ninety thousand maravedis, an appeal shall be brought by the party who may think himself aggrieved, directly to the tribunal to be hereafter appointed by His Majesty; and when the said appeal shall have been lodged, communication thereof shall be made to the adverse party, who shall plead against the merits of the same: that is to say, whether sentence shall be suspended or executed, notwithstanding appeal. To determine this point, the judge shall demand the documents, and after examining the same pronounce either for or against, as he shall think just; and in urgent and particular cases, such as dowry, alimony, or others of a similar nature, in which appeals should not lightly be admitted, he shall order execution. In this class are also comprised criminal causes, unless such circumstances should occur as are cited at the conclusion of the preceding para-

graph; and in which case execution should be suspended until the superior judge may have examined the same, and confirmed the sentence pronounced.

2. If the appeal be admitted, the second trial shall be conducted in the manner following: The judge shall direct the delivery of the documents in the cause to the appellant, that he may declare in what consists the grievance of which he complains; by which is meant that he shall set forth in argument the injury he would sustain by the execution of the sentence, which, for one or more reasons, is not in conformity to the provisions of the law in similar cases, and concluding by moving that the same be annulled. A copy of this declaration shall be given to the other party to reply thereto and confute the arguments of his adversary, by setting forth those tending to prove that the sentence has been pronounced in conformity to law. The judge shall then direct that after having transcribed the documents in the cause, at the expense of the appellant, the originals be transmitted to the tribunal, in which the appeal is to be tried. He shall summon the parties to hear the transcripts compared with the originals, as also to appear in person, or by proxy, at the tribunal to which the said appeal shall be carried, within the delay that may be allowed, according to the distance of the same from this province. The said delay shall commence from the day on which the first registered vessel shall sail from this port for the place where the superior tribunal shall be established; the judge having previously ordered the delivery, on board the said vessel, of the original documents aforesaid. He shall inform the appellant, that if, within the delay allowed, he shall not prove that he appeared before the said tribunal with the original documents, he shall fully and indisputably forfeit his appeal, and that the execution of the sentence shall consequently be ordered on the first requisition of the adverse party. If, however, the appellant shall establish the loss of the vessel in which his documents were embarked, or of the one in which he had transmitted the vouchers of his having appeared at the superior tribunal within the time prescribed; or, in short, any other impediment which may discharge him from the aforesaid obligation, the appeal may not be declared to be abandoned; but on the contrary, a further delay shall be granted; and if the originals have been lost, copies thereof shall be delivered to him, that he may prove his appearance and compliance with whatsoever has been required.

3. In the case of a judgment for a sum not exceeding 90,000 maravedis, exclusively of the costs, the appeal shall be made to the *cabildo* in this city, and the same shall be conducted in the manner following: Within five days, computing from the day of the signature of the sentence, the appellant shall present his petition, which shall be delivered to the register to annex his certificate thereto; on sight of which the *cabildo* shall appoint two regidores, in quality of commissioners, to decide on the cause of appeal, conjointly with the judge who pronounced the sentence. The said commissioners shall be bound to accept the said appointment, and

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shall take an oath that they will impartially discharge the duties of the same.

4. The said document with the certificate shall be delivered to the scrivener in the cause, who shall institute and pursue the appeal. The document shall be delivered to the appellant, that he may deduce and set forth his grievance in the manner explained in the second paragraph; which shall be done within fifteen days at furthest; and communication thereof shall be made to the other party, that he may reply thereto within a further term of fifteen days; so that within thirty days from the appointment of commissioners the cause shall be ready for determination. It must be observed that the aforesaid term of thirty days cannot be prolonged, even with the consent of both parties.

5. The pleadings being concluded in the manner prescribed, the scrivener shall, within two days, deliver the documents to the judges, who shall examine the same, and give judgment within ten days, computing from the expiration of the thirty aforesaid, annulling or confirming, augmenting or diminishing, the previous sentence, as they may think just. After the expiration of the aforesaid ten days, judgment may not be pronounced; or, if given, the same shall be void; and the first sentence shall take full effect, and be executed according to the tenor thereof.

6. If a majority of the three judges appointed shall accord in opinion, their sentence shall be valid and conclusive, and an appeal to any other tribunal shall not be admitted; but the judge who pronounced the first sentence shall cause the second to be executed so soon as the documents shall have been delivered to him for that purpose.

SECTION V.—Of Punishments.

1. He who shall revile our Savior, or his mother, the most holy Virgin Mary, shall have his tongue cut out, and his property shall be confiscated, applicable, one half to the public Treasury, and the other half to the informer.

2. He who, forgetting the respect and loyalty which every subject owes to his King, shall have the insolence to vilify his royal person, or that of the Queen, the hereditary prince, or the infants, their sons, shall be punished corporally, according to the circumstances of the crime; and the half of his property shall be confiscated to the profit of the public or royal treasury, if he shall have legitimate children; but if he shall have none, he shall forfeit the whole; applicable, two-thirds to the public treasury, and the other third to the accuser.

3. The authors of any insurrection against the King or the State, or those who, under pretext of defending their liberty and rights, shall be concerned or take up arms therein, shall be punished with death, and the confiscation of their property. The same punishments shall also be inflicted on all those who may be convicted of lèse-majesté, or treason.

4. Whosoever shall outrage another by either wounds, cuffs, or blows with a stick, shall be punished as the judge may think suitable to the case

and to the rank of both the offender and the offended. But if the abuse consists only in words, and the aggressor be not noble, the judge shall exact the retraction of the same, in the presence of himself and other persons, and, moreover, shall condemn the said aggressor to a fine of 1,200 maravedis, applicable one half to the public treasury, and the other half to the party offended. If the aggressor be of rank, or enjoys the privileges of nobility, he shall be condemned to a fine of 2,000 maravedis, applicable as aforesaid. The judge, however, may, in lieu of the same, inflict any other punishment which he shall think suitable to the rank of the parties and the nature of the outrage. If no blood has been spilt, nor complaint been made by the offended, or if he shall desist from prosecuting the same, the judge may not interfere therein.

5. He who shall ravish a girl, a married woman, or a widow of reputable character, shall suffer death, and his property shall be confiscated to the use of the person injured; but if the said person be not of reputable character, the judge may inflict such punishment as he may think suitable to the case.

6. The married woman convicted of adultery, and he who may have committed the same with her, shall be delivered up to the will of her husband; with the reserve, however, that he may not put the one to death without inflicting the same punishment on the other.

7. The man who shall consent that his wife live in concubinage with another, or who shall have induced her to commit the crime of adultery, shall, for the first time, be exposed to the public shame, and condemned to a confinement of ten years in some fortress; and for the second time shall be sentenced to one hundred lashes and confinement for life.

8. The same punishment shall also be inflicted on those who carry on the infamous trade of enticing women to prostitution, by procuring them the means of accomplishing the same.

9. He who shall be guilty of fornication with a relation in the fourth degree shall forfeit half his property to the profit of the public treasury, and shall, moreover, be punished corporally, or banished, or in some other manner, according to rank of the person and degree of the kindred. If the said crime be committed between parents and their offspring, or with a professed nun, the same shall be punished with death.

10. He who shall commit the detestable crime against nature shall suffer death, and his body shall afterwards be burned, and his property shall be confiscated to the profit of the public and royal treasuries.

11. The woman who shall be publicly the concubine of an ecclesiastic shall be sentenced for the first time to a fine of a mark of silver, and to banishment for one year from the city or from the place where the offence may have been committed. The second time she shall be fined another mark of silver, and banished for two years, and in case of relapse, she shall be punished by one hundred lashes, in addition to the penalties aforesaid.

12. If fornication be committed between bachelors and girls, they shall be admonished by the judge to discontinue every kind of intercourse with each other, under the penalty of banishment of the man, and confinement of the girl, for such time as may be necessary to operate a reformation. If this menace have not the desired effect, the judge shall put the same into execution, unless the rank of the parties requires a different procedure; and in which case the said offence shall be submitted to the consideration of the judges, collectively, to apply the remedy which their prudence and zeal for the repression of such disorders may suggest. They shall punish all other libidinous offences in proportion to their extent, and to the injury occasioned thereby.

13. He who shall break his oath taken, in conformity to law, for the validity of an agreement, shall forfeit the whole of his property to the profit of the public and royal treasuries.

14. False witnesses in civil causes shall be exposed to public shame, and banished for ten years; but in criminal causes, in which false testimony is more important in its consequences, the same shall be punished capitally. If, however, the accused shall not have thereby been sentenced to death, the false witness shall only be exposed to public shame, and be sentenced to perpetual banishment to some presidio. The said punishments may, however, be commuted, when from the rank of the offenders they cannot be condemned to the same.

15. He who shall steal the sacred vessels in a holy place shall suffer death.

16. Assassins and robbers on the highway shall suffer death.

17. The same punishment shall also be inflicted in cases of forcible robbery, which shall be reputed such, when the proprietor or other persons shall have made resistance.

18. Robberies of classes other than those comprised in the preceding articles shall be punished corporally, according to the nature of the same, and the rank of the persons.

19. He who shall kill another shall suffer death, unless done in his own defence, or under such circumstances as are explained in statutes 3, 4, 12, tit. 23, book 8, of the Nouvelle Recopilation.

20. He who shall commit wilful murder, or wound another with intent to deprive him of life, although the wounded person may survive, shall suffer death, and shall be dragged to execution at the tail of some animal; and the half of his property shall be confiscated to the profit of the public or royal treasury.

SECTION VI.—Of Testaments.

1. For the validity of a nuncupative will, it is necessary that the same be received by a notary public, in presence of at least three witnesses, residents of the place; or if there be no notary, there must be present five witnesses, residents of the place in which the will shall be made; if, however, it be impossible to procure the last mentioned number, three may suffice.

2. A testament shall be equally valid when

made in the presence of seven witnesses, although they be not residents of the place, and although the same be not made in the presence of a notary.

3. If, after the closing of a will, the testator shall wish to add to, diminish, or change any disposition contained therein, he may do the same effectually by a codicil; observing the same formalities, and in the presence of the same number of witnesses required for the validity of the testament itself; but he may not change the name of the heir, unless another will shall be made.

4. If the testator be blind, five witnesses shall be necessary to each of the instruments aforesaid, in order to prevent those deceptions to which those who labor under such a misfortune are exposed.

5. For the validity of a written will, styled in Latin *in scriptis*, the testator, on delivering the same to the notary, (who shall seal it,) shall put an endorsement on the cover, stating that the within is his will; which endorsement shall be signed by himself and the seven witnesses, if they can write; and if not, the others shall sign for them; so that there be eight signatures, including that of the scrivener, who shall also put his signature thereto.

6. Before the opening of a will, after the decease of the testator, it is necessary that the judge who shall have knowledge thereof, shall certify thereto, and that the witnesses appear before the said judge, and declare, on oath, that they were present when the testator declared the same to be his last will: they shall acknowledge their signatures, or shall declare (if such be the case) that by request some one has signed for them.

7. As it often occurs that persons, either unable or unwilling to make a will themselves, empower others for that purpose, they are hereby informed, as follows:

8. That such authority must be given in presence of the same number of persons, and with the same formalities required for testaments.

9. That the person empowered to make a will for another cannot revoke a will previously made by his constituent, unless the said will shall contain a special clause to that effect.

10. That he may neither appoint an heir, bequeath a third or a fifth to any of the children or descendants of his constituent, disinherit any of them, substitute others in their stead, nor name a guardian for them without an express clause and special authority to that effect; by reason that the constituent should himself nominate his heir, and designate, by his will, whatsoever he may wish to be done.

11. That if the testator has not appointed an heir, nor designated one in the power given to make a will for him, the person so empowered may only direct the payment of the debts of the deceased, after which a fifth part of the proceeds of his property shall be distributed for the repose and relief of his soul: the remainder shall be divided amongst the relations of the deceased, who, according to law, shall inherit; or if there be none, the whole shall be applied to pious uses for the benefit of the soul of the deceased, after pre-

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viously deducting therefrom what is allowed by law to the wife, as dower, bridal presents, *donations proper nuptias*, the half of the profits on the joint estate, and whatever may have fallen to her by succession of donation during the marriage.

12. That if the constituent shall have appointed an heir, the person empowered as aforesaid may not dispose of, in legacies pious and profane, more than the fifth part of the property of the testator, his debts being previously paid, unless, by a special clause, he may be authorized to dispose of a greater part.

13. That the person empowered should proceed to the completion of the will with which he is charged within four months, if he be in the place in which the power was given, or, if not, within six months, unless he be out of the kingdom; in which last case, one year shall be allowed, computing from the day of the decease of the constituent. All that may be done by the person empowered as aforesaid after the expiration of that term shall be void and of non-effect, even if he shall allege that he had no knowledge whatever of his having been so empowered. But all the other stipulations by the testator, in the said power contained, shall be carried into execution, and the remainder of his property shall be delivered to his relations who shall inherit *ab intestat*, and who, with the exception of the legitimate children of the descendants or progenitors of the testator, shall give the fifth part of the net proceeds of the said property for the ease and repose of the soul of the said testator.

14. That the person empowered as aforesaid may not in any manner revoke the will he shall have made by virtue of the authority aforesaid, nor add a codicil, nor any declaration thereto, even if the same should be for pious uses, and notwithstanding he may have reserved the power of revoking, augmenting, diminishing, or changing the disposal he shall have made.

15. To the said testaments, codicils, or powers given to that effect, women, monks, people under the age of fourteen, drunkards, or other disqualified persons, shall not be admitted as witnesses.

16. A testator may bequeath a third or a fifth to any one of his children, or other legitimate descendants, by specifying the part of his real or personal property which he designs for that purpose.

17. When a testator shall make a bequest to any of his children or legitimate descendants, he may impose such condition, remainder, or entailment, upon the property bequeathed as he may think proper, in order that his other legitimate descendants, or, in default thereof, his illegitimate descendants, or if there be none of either of those descriptions, his relations may enjoy the benefits resulting therefrom; to the end that the said bequest may never pass to a stranger, unless all the relations in the order aforesaid shall be deceased.

18. The father may also, while living, advance any of his children or legitimate descendants, in the same manner as at his death, or by will; but it is to be understood that he shall make the said advancement but once, and that the same being

made during his life cannot be revoked, if settled by agreement and fixed by a public instrument, which should precede the delivery of the object in which consists the advancement; or if having been made with a view to marriage, or for any other similar cause, unless he shall have reserved, by the said instrument, a power to that effect; in which case he may revoke the said advancement.

19. If the father or the mother shall have entered into an agreement not to advance any one of their children, the said agreement shall thereafter be binding; and if they should attempt the said advancement by any public instrument, the same shall be void and of non-effect. If, on the contrary, they shall promise the said advancement in consideration of marriage, or for other similar cause, the right to a third or a fifth shall be good at the decease of the parent, although no mention thereof shall have been made in the will.

20. The said advancement being made during life, or at the point of death, shall be calculated upon the real value of the property at the time of the decease, and not at the time of making the same.

21. All deeds of gift, or legacies, by the father or mother to their children or descendants, during life, or bequeathed by will, shall be reputed on account of the third or the fifth, although the same may not have been expressed. In consequence thereof, they may not bequeath a third or a fifth to any of the other children or descendants, which shall exceed the value of the said legacies, or gifts to the former.

22. When any one shall die intestate, and without having empowered another to make a will for him, in the manner hereinbefore explained, if there be no legitimate children, or progenitors who may inherit, the relations by blood and kindred of the fourth degree shall inherit the whole of the property; observing that the nearest relations shall inherit of right, and to the exclusion of those who may be further removed, unless the nearest relations shall be brothers of the deceased; in which case the children of the other brothers who shall have died previous to the decease of the person intestate, shall take a portion of the whole; that is to say, that if one brother, and three or four children of another brother, be living, the said children shall be entitled to an equal proportion of one-half of the property, and the brother, uncle of the said children, shall inherit the other half, by reason that the nephews succeed by representation of their father, and not in their own right. This rule shall be followed in the division of estates when there may be a greater or less number of heirs; the foregoing being intended for an example.

23. If the deceased shall have neither progenitors nor descendants capable of inheriting, in the order explained in the preceding article, the King shall be his heir, and the property shall be vested in the treasury or royal chamber.

24. Those who have not legitimate descendants may will in favor of their illegitimate children, although they may have progenitors. It must be understood, that by illegitimate children are meant

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those born of a free girl, to whose marriage with the father of the said children no legal impediment existed. Those children shall succeed in their own right, to their mother, and shall inherit the whole of her property, whether she may have died intestate, or otherwise, and shall have a preference over the progenitors, in case she shall have no legitimate children, who would otherwise inherit, to the exclusion of the illegitimate children.

25. Illegitimate children of every description shall incontestably succeed to their mother, if she have no legitimate children or descendants, even to the exclusion of her father or other progenitors.

26. The father and mother having legitimate children or descendants, may not give, by way of maintenance, to their illegitimate children more than the fifth part of their property; of which proportion they may also dispose for the benefit of their souls, or by a legacy to a stranger; excepting from the foregoing, the children of ecclesiastics, or monks, who cannot in any manner inherit from their parents or kindred, nor pretend to anything possessed by them during their lives.

27. A son or daughter, while under the authority of the father, being of competent age, that is to say, the son being fourteen, and the daughter being twelve, may will, in the same manner as if they were emancipated from their parent, and may dispose of the third part of their property acquired by succession, donation, or in any other manner, unless derived from the father, who shall inherit the remaining two-thirds, in the same manner as the mother or other progenitor.

Table of Fees demandable by Judges, Lawyers, Scriveners, Attorneys, and the other officers of justice.

Judges.—For a signature containing the baptismal and family name of the judge, four reals in piasters fortes of America, as also for the other fees hereafter detailed. They shall put the aforesaid signature to judgments, decrees, warrants, titles, and despatches which they may deliver for another tribunal. They shall exact but two reals in the same money for a signature containing their family name only, and the same for their cipher.

For a sitting of two hours and a half, in cases of inventories, seizures, assessments, public sales, adjudications of real or personal property, procès-verbaux, declarations, examinations, and other acts of justice of whatsoever nature, two ducats, equal to twenty-two reals in milled piasters. For affixing the seals, in cases of death, one ducat. If a longer time be necessary for the security of the property, the fee may be augmented in proportion to the time that shall be employed. For the opening of a will, and the examination of the seven witnesses, which should precede the opening of the will, forty-eight reals; viz: forty-four for two sittings, and the other four for the signatures to the two instruments. They shall receive four ducats per diem while employed in the country, to continue until their return to their own houses; they shall be decently entertained, and shall be provided with a horse and other things necessary.

Assessors.—Assessors shall have also two ducats for each sitting in the city, and four for the country, either with or without commission. They shall charge one real per leaf for revising documents, according to the bulk of the same, to the circumstances of the case, and to what may be only a continuation of the usual business.

Alcaid, &c.—The Alcaid Mayor Provincial, and the officers of the Saint Hermandad, shall receive the same fees as the other royal judges, for their signatures and their sittings.

Regidores.—In causes of little importance, which may be brought before the cabildo by appeal, two regidores shall be appointed as commissioners, conjointly with the judge who shall have pronounced the previous sentence. In all such cases they shall receive the same fees as the judge for their signatures and sittings.

The Alguazil Mayor.—In common executions against debtors, they shall require payment, and if the same be not complied with within seventy-two hours from the moment of the summons, the said debtors shall pay, besides the fees to the judge and the other officers of justice, the tenth to the alguazil mayor, which is five milled piasters for the first hundred piasters, and two and a half piasters for every other hundred piasters; so that if the execution be issued for three hundred piasters, he shall take ten for the tenth. He may not, however, exact the same until the creditor be satisfied in the sum for which the execution shall be given.

Depositary General.—The Depositary General shall take three per cent., on all sums in specie, which may come into his possession by way of deposit, and the same for plate, jewels, or other personal property which may be deposited with him.

For real property, as houses, plantations, and other property yielding revenue, he shall take five per cent. upon the said revenue, which shall be his compensation for the management of said property, for receiving the proceeds thereof, and for rendering an account of the same to the tribunal by whom he is appointed, whenever he shall be required thereto. He shall also take five per cent. upon the proceeds of the labor of all slaves in his care, who may not be employed upon the estate.

Whenever bonds or notes shall be deposited with him, he shall take five per cent. upon the sums which he may recover on account of the same.

Lawyers.—The fees of lawyers shall be settled by another lawyer whom the judge shall appoint; and for every sitting their compensation shall be the same as that of the judges and assessors. But when they may be employed in examining documents in order to assist at a court, they shall be paid separately.

Scriveners.—Scriveners shall have fifteen reals for a sitting in the city, and thirty per diem when employed in the country, to be continued until their return to their own houses, and two reals for each leaf of writing, and shall be furnished with a horse, and decently entertained.

For the opening of a will, the examination of

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the seven witnesses, which should preclude the same, and legacies to the church, fifty-two reals.

For a copy of a decree or a provision, one real. For an act, two reals. For a notification, citation, or participation, two reals. For a declaration in his own house, six reals; or, if elsewhere, eight reals; and two reals for each leaf of writing, either in his own house or elsewhere. For a despatch, two reals per leaf, and eight for the commencement and conclusion of the same. For each leaf of an exemplification of an act, one real and three quartilles, and one real for his signature. For duplicates, or copies of documents drawn from his records, two reals per leaf.

For a bill of sale of slaves, twelve reals. For a sale of personal property, which usually contains two leaves, two piasters; and if the same shall contain more on account of the conditions which the parties may wish to be inserted, he may augment in proportion. For a simple bond, eight reals; for a bond with mortgage, twelve reals; and if there be several mortgages comprised in the said bond, he shall be paid according to the labor and trouble he may have had in drawing up the same. For a receipt, eight reals. For an agreement, according to the number of leaves the same may contain; and if an examination of documents be necessary, the same should be taken into consideration, and the charge should be at least doubled.

For a will containing three or four sheets, four piasters, and augmented in proportion to the number of sheets.

Recorder of Mortgages.—For a certificate of a house, plantation, or other real property, eight reals. For a certificate of a slave, from one to the number of eighteen, four reals; and from that number to one hundred, twelve reals for each certificate. For a certificate of a mortgage on a vessel, four reals. For recording in the book of mortgages, those given for the security of payments, either for personal property, slaves, or vessels, four reals; and if the same be of an unusual length, eight reals; but when only a short note to designate the page in which the mortgage is recorded be required, no charge shall be made.

Attorneys.—For an introductory demand, five reals. For assisting in the city at an inventory, sale, adjudication, or seizure, twelve reals; for the same in the country, if employed a whole day, three piasters. If, however, the case requires much writing, they shall be paid according to the time that the lawyer may have been employed in drawing up the said case.

Contador Judiciaire.—For every five hours employed in preparing an account for settlement, four ducats, making forty-four reals, observing that five hours shall be accounted a day; and out of the aforesaid sum he shall pay four reals to the scrivener for each sheet of twenty-five lines to a page.

Assessor of Costs.—He shall be paid one quartille for each sheet of the documents contained in the cause; the costs of which he shall assess. Four quartilles make a real.

Appraisers of Personal Property, Slaves, and

other effects.—To the exchange broker, for the valuation of furniture, houses, slaves, merchandise, &c., eleven reals, notwithstanding the appraisement may require two hours and a half.

Alarifs, Master Carpenters, and Assayers of Silver.—Alarifs, master carpenters, masons, and joiners, shall have a ducat for every thousand piasters of the amount of the appraisement; and if the same shall exceed four, six, or eight thousand, they shall not demand more than four ducats; but if they be employed in the country, and the appraisement shall not amount to one thousand piasters, they shall have two ducats per diem during the time they may be employed, on account of the distance. If, however, one day only shall be necessary, although the appraisement shall amount to three or four thousand piasters, they shall be paid as if the same had been made in the city; but they shall be furnished with a horse, and shall be decently entertained. The assayer of silver shall have eleven reals for each appraisement, although the articles may be valuable, by reason that little time is required for that purpose.

Appraisers of Land.—They shall have two ducats per diem, and the same when they shall value buildings of little consequence in the country, woodland, and fields in grain.

Surveyors.—Surveyors shall have three ducats per diem.

Alguazils.—The Alguazils shall have four reals for a summons to appear, and for a demand of payment. They shall also receive the same sum for obtaining documents of every description. They shall have eight reals for arresting and conducting to prison. The sergeant, in this case, shall have the same.

Jail Fees.—The Alguazil Mayor shall have twelve reals for every free person imprisoned, and eight reals for a slave.

At New Orleans, the 25th November, 1769.

DON ALEX. O'REILLY.

Don Alexander O'Reilly, Commander of Benfayau, of the order of Alcantara, Inspector General of Infantry, appointed, by special commission, Governor and Captain-General of this Province of Louisiana.

Divers complaints and petitions which have been addressed to us by the inhabitants of Opelousas, Attakapas, Natchitoches, and other places of this Province, joined to the knowledge we have acquired of the local concerns, culture, and means of the inhabitants, by the visit which we have lately made to the Côte des Allemands, Côte des Acadiens, Iberville, and La Point Coupée, with the examination we have made of the reports of the inhabitants assembled, by our order, in each district, having convinced us that the tranquillity of the said inhabitants, and the progress of culture required a new regulation, which should fix the extent of the grants of lands which shall hereafter be made, as well as the enclosures, cleared lands, roads, and bridges, which the inhabitants are bound to keep in repair, and point out the damage by cattle, for which the proprie-

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tors shall be responsible. For these causes, and having nothing in view but the public good, and the happiness of every inhabitant, after having advised with persons well informed in these matters, we have regulated all those objects in the following articles:

1. There shall be granted to each newly-arrived family, who may wish to establish themselves on the borders of the river, six or eight arpents in front, (according to the means of the cultivator,) by forty arpents in depth; in order that they may have the benefit of the cypress wood, which is as necessary as useful to the inhabitants.

2. The grantees established on the borders of the river shall be held bound to make, within the three first years of possession, mounds sufficient for the preservation of the land, and the ditches necessary to carry off the water. They shall, besides, keep the roads in good repair, of the width of at least forty feet between the inner ditch which runs along the mound, and the barrier, with bridges of twelve feet over the ditches which may cross the roads. The said grantees shall be held bound, within the said term of three years' possession, to clear the whole front of their land to the depth of two arpents; and, in default of fulfilling those conditions, their lands shall revert to the King's domain, to be granted anew, and the judge of each place shall be responsible to the Governor for the superintendence of this object.

3. The said grants can neither be sold nor alienated by the proprietors, until after three years of possession, and until the abovementioned conditions shall have been entirely fulfilled. To guard against every evasion in this respect, the sales of the said lands cannot be made without a written permission from the Governor General, who will not grant it until, on strict inquiry, it shall be found that the conditions above explained have been duly executed.

4. The points formed by lands on the Mississippi river, leaving in some places but little depth, there may be granted, in these cases, twelve arpents of front; and, on a supposition that these points should not be applied for by any inhabitant, they shall be distributed to the settlers nearest thereto, in order that the communication of the roads may not be interrupted.

5. If a tract belonging to minors should remain uncleared, and the mounds and roads should not be kept in repair, the judge of the quarter shall inquire into the cause thereof. If attributable to the guardian, he shall oblige him to conform promptly to this regulation; but if arising from want of means in the minors, the judge, after having, by a verbal process, obtained proof thereof, shall report the same to the Governor General, to the end that the said land may be sold for the benefit of the minors, (a special favor, granted to minors only;) but if no purchaser shall, within six months, be found, the said land shall be conceded gratis.

6. Every inhabitant shall be held bound to enclose, within three years, the whole front of his land which shall be cleared; and for the remain-

der of his enclosure he will agree with his neighbors, in proportion to his cleared land and his means.

7. Cattle shall be permitted to go at large, from the eleventh of November, to the fifteenth of March of the year following; and at all other times the proprietor shall be responsible for the damages that his cattle may have done to his neighbors. He who may have suffered the damage shall complain to the judge of the district, who, after having satisfied himself of the truth thereof, shall name experienced men to estimate the value of the same, and shall then order remuneration without delay.

8. No grant in the Opelousas, Attakapas, and Natchitoches, shall exceed one league in front by one league in depth; but when the land granted shall not have that depth a league and a half in front by a league in depth may be granted.

9. To obtain in the Opelousas, Attakapas, and Natchitoches, a grant of forty-two arpents in front by forty-two arpents in depth, the applicant must make it appear that he is possessor of one hundred head of tame cattle, some horses and sheep, and two slaves to look after them; a proportion which shall always be observed for the grants to be made in the said places, but none shall ever be made of greater extent than that declared in the preceding article.

10. All cattle shall be branded by the proprietors; and those who shall not have branded them at the age of eighteen months cannot thereafter claim a property therein.

11. Nothing being more injurious to the inhabitants than strayed cattle, without the destruction of which tame cattle cannot increase, and the inhabitants will continue to labor under those evils of which they have often complained to us; and considering that the province is at present infested with stray cattle, we allow to the proprietors until the first day of July, of the next year, one thousand seven hundred and seventy-one, and no longer, to collect and kill, to their use, the said strayed cattle; after which time they shall be considered wild, and may be killed by any person whomsoever, and no one shall oppose himself thereto, or lay claim to a property therein.

12. All grants shall be made in the name of the King, by the Governor General of the Province, who will, at the same time, appoint a surveyor to fix the bounds thereof, both in front and depth, in presence of the judge ordinary of the district, and of two adjoining settlers, who shall be present at the survey. The above-mentioned four persons shall sign the verbal process which shall be made thereof, and the surveyor shall make three copies of the same; one of which shall be deposited in the office of the scrivener of the Government and cabildo, another shall be delivered to the Governor General, and the third to the proprietor, to be annexed to the titles of his grant.

In pursuance of the powers which our lord the King (whom God preserve) has been pleased to confide to us, by his patent issued at Aranjuez, the 16th April, 1769, to establish in the military, the police, and in the administration of justice,

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and his finances, such regulation as should be conducive to his service and the happiness of his subjects in this colony, with the reserve of His Majesty's good pleasure, we order and command the Governor, judges, cabildo, and all the inhabitants of this Province, to conform punctually to all that is required by this regulation.

Given at New Orleans, the 18th February, 1770.

Regulation concerning the general police, the repairs of bridges, roads, and mounds, and the police of slaves; for the use of the commanders of posts and of coasts, and the syndics of the Province of Louisiana.

The astonishing success which has attended certain designing, restless, and enthusiastic persons, and who certainly have nothing to lose, in disseminating injurious reports tending to produce an entire distrust between the Government and the inhabitants, which would infallibly plunge them into all those atrocities which have desolated the French colonies, has induced us to digest a regulation capable of re-establishing order, police, and tranquillity throughout the province.

In pursuance thereof, the Government will establish within every three leagues, at farthest, a syndic chosen from amongst the most industrious and respectable inhabitants of the district, who shall be changed in the month of January of every year, unless he may consent to be continued for the succeeding year, and whose functions shall be subordinate to the commander of the post, or of the coast, to whom he shall render a weekly account of the occurrences in his district.

Functions of the syndics.

Every person who shall have acquired knowledge of an unlawful attempt, either by being an eye-witness thereof, or from hearsay, shall be bound to give information thereof to the syndic of his district, and to require him to take the necessary order thereon, pointing out to him the offender, the place, and those persons who may have knowledge of the same, under a penalty of six piasters, or even being punished to the extent of the law if his silence shall proceed from malice or connivance. Seditious discourses, or those tending to alarm the public mind, shall also be reported to the syndic of the district in which they may be held, as attempts against the public tranquillity, under the penalty of one hundred piasters; and the syndic who shall not give an account of the same to the commandant or to the Government, shall incur the same penalty. Information being given, the syndic shall proceed to a verbal inquiry, accompanied by two respectable inhabitants, who shall assist him as witnesses. In the present case, the syndic shall have power to oblige the two persons who may be nearest at hand, to assist him as witnesses, under the penalty of four piasters, and being considered unfriendly to good order.

As the necessity of an inquiry into the offence may be urgent, and the syndic may be absent, or his residence at too great a distance, every individual shall in this case have a right to summon his two nearest neighbors to accompany him to the place where the offence may have been com-

mitted; and, in case of refusal, they shall incur the penalty aforesaid. The offender, being convicted of the offence, shall be conducted to and accused before the syndic, who shall secure him, and give information thereof, or send him to the commandant.

Syndics are authorized to search plantations, houses, negro huts, &c., accompanied by two witnesses, when the case shall require it, and when the informer shall bind himself to find therein the evidences of the truth of his information, and not otherwise; and if the informer shall fail in so doing, he alone shall be responsible to the proprietor.

The syndics shall take cognizance, provisionally and verbally, of all crimes and disorders, committed within their districts, notwithstanding the offender shall belong to another district.

The general police, and the security of the district, the repair of bridges, roads, and mounds, the general inspection of coasters, passengers, the provisions, maintenance, subordination, and police of the negro camps, the security of horses, cattle, &c., shall be within the province of the syndics, who shall conform strictly to the articles herein contained in relation to those objects.

Whenever the Government shall think it expedient to convoke the syndics to a general meeting at the capitol, or to a private meeting at the residence of the commandant of the post, they shall be accompanied by two persons as evidences of the satisfaction of their district, upon which condition only they shall be entitled to take a part in the deliberations; but the evidences shall take no part therein, their duties being to observe that their syndic does not lose sight of the interest of the district. The syndics may not assemble the inhabitants of their district without the permission of the commandant of the post, who shall not make opposition thereto without strong motives, which he shall communicate to the Government. All meetings consisting of more than eight inhabitants, for the purpose of treating of public affairs, is strictly prohibited; and the syndic is enjoined to give information thereof to the Government, under the penalty of being considered a party thereto.

In case a syndic shall incur any one of the penalties provided by this regulation, three individuals shall join him for the purpose of convicting and denouncing him to the commandant of the post, who shall impose the penalty provided, and shall communicate the same to the Government.

A syndic who, through negligence, or from motives of humanity, shall dissemble a fault, or conceal it from the knowledge of the commandant, or shall join with him for that purpose, shall incur the penalty provided for the offender, for having abused the public confidence; and the Government reserves the care of punishing the commandant with still greater severity if he shall be a party thereto.

The commandants of posts, or of the coasts, shall deliver to the Government, the first of December in each year, a list of the inhabitants in

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their opinion the most suitable to be elected syndics for the following year; observing that their respective distances from each other must not exceed three leagues, and on which account they shall mention the situation of their plantations; and observing, likewise, that there be some on both sides of the river, as also in the place of residence of the said commandant or adjacent thereto.

The first day of January, the new syndic, elected by the Government, shall enter upon the duties of their office, previously receiving, in presence of the commandant, this regulation, and the other instructions relative to their employment, from the hands of the syndic of the preceding year.

The persons of the syndics shall be respected by the public; and whosoever shall dare to insult, them, menace them, or disobey their orders, shall forfeit forty piasters for the two first-mentioned offences, and one hundred for the third; applicable one-half to the royal treasury, and the other half to defray the expenses of the prison and courts of the district.

Assaults shall be punished to the extent of the laws, when committed on those who are charged with the execution of them.

General Police.

All coasters and travellers shall exhibit their passports, and reply to the questions which may be put to them by the syndic of the district, who shall require the same, and shall make himself known, by declaring his family name.

The passport shall specify the number of horses conducted by the traveller, and all articles for sale on board the coaster, as also the number of the crew, who shall be persons known, and for whose conduct the master shall be responsible. Those who shall be found with an unusual number of horses, cattle, or quantity of merchandise, shall be arrested by the syndic of the district, and sent to the commandant of the post or of the coast, who shall give information thereof to Government.

A passenger that may be necessitated to change horses, to purchase others, or cattle, merchandise, &c., should have the same endorsed on his passport by the syndic of the district in which the said exchange or purchases may have been made.

A coaster who shall during his voyage leave any of his crew on shore, or take others on board, must have an endorsement to that effect made on his passport. Every person found without a passport shall be arrested by the syndic, examined, and delivered to the commandant of the post.

Every traveller, coaster, &c., previous to circulating any news of importance, shall make a relation thereof to the syndic of the district, who shall require his name, and shall permit him to divulge the same, or shall forbid him if the circulation thereof would be injurious to the public tranquillity or the good of the State, and shall render an account thereof to Government, previously holding the said traveller or coaster responsible for the result.

Pocket pistols, poignards, large knives, sword canes, and other similar weapons, are forbidden by

law, under penalty of the presidio; and the syndics shall arrest those who may wear them.

The syndics shall be acquainted with the brand or marks on the animals of their district, and shall cause those to be taken up which shall be found without the mark of the proprietor, or with another strange mark; in this last case they shall inform the commandant thereof, who shall communicate the same to the other syndics, to the end that the proprietor may be acquainted therewith.

Any person convicted of having detained, stolen, or killed any kind of tame animal which shall not belong to him, without having given information thereof to the syndic of his district, shall be sentenced to return the same, if alive, and to a fine equal to one-half the value thereof; one-third of which shall go to the use of the proprietor, another third to the royal treasury, and the remaining third to defray the expenses of the courts and prison of the district; or, if the animal be dead, he shall pay four times the value thereof, which shall be applied as aforesaid.

It is absolutely forbidden, under the same penalty, to shoot at any tame animals without permission of the syndic, who shall not grant the same without the knowledge of the commandant, and then only when the cattle are known to be strayed and ravaging the grain fields.

The turning out of cattle is forbidden from the 15th of March, to the 15th of November; if, however, the inhabitants of a district shall unanimously agree to prolong the time, the syndic may, with the knowledge of the commandant, depart from this article; in all other cases, it shall be optional with the inhabitant either to kill the tame animals found in his grain fields, in presence of two witnesses, or to be indemnified for the damages, by the award of two or three capable persons, one of whom shall be named by himself, another by the proprietor of the animal, and the third by the syndic, in case the two first shall be divided in opinion; observing that the award shall be made upon the supposed value of the grain when arrived at maturity, and that the animal shall be returned to the proprietor thereof.

Every proprietor having an exclusive right to the enjoyment of his property, none other shall fish, hunt, or go within his enclosures, without his permission, under the penalty of restitution of game, fish, &c., and of a fine of four piasters, applicable one-half to the expenses of the courts and prison of the post, and the other half to the royal treasury, to be imposed by the syndic of the place; and, in case of repetition, the same shall be doubled, trebled, &c.

The syndic shall be entitled to command the patrols of his district when the case shall require it, and with the knowledge of the commandant; no one shall refuse to serve in his turn under a penalty of six piasters, applicable one-half to the person who shall have taken his place, and the other half to the royal treasury; and whosoever shall refuse to conduct a prisoner from one plantation to another on his way to the residence of the commandant of the post, shall incur the same penalty, which shall be disposed of as aforesaid.

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For the more speedy execution of justice, the syndics shall take cognizance, in the first instance, of all matters in dispute the amount of which shall not exceed ten piasters; all others shall be brought before the commandant of the post, who may not give judgment for more than fifty piasters, and shall refer those exceeding that amount to the Government, by reason that the law requires that they shall not be decided without the advice of an assessor or a lawyer.

At every post not provided with a prison the commandant shall call a meeting of the syndics, at which he shall preside, for the purpose of selecting a plan for the building; which, being adopted by a majority of the meeting, shall be published and posted up during nine days; after which they shall proceed to the erection of a prison proportionate to the population of the place, the expenses of which shall be defrayed by the inhabitants, according to their means.

The prison of the post shall always be situated near the residence of the commandant, that he may provide for the maintenance thereof, as also that of the prisoners insolvent; to which objects a part of the fines imposed on the infringers of this regulation is appropriated. The commandants shall, in the months of July and January, account to the Government for the fines they have received, and shall at the said times pay into the Royal treasury the amounts applicable thereto.

As the dissemination of false reports on the coasts is one of the most efficacious means resorted to by the disturbers of the public tranquillity to obtain proselytes, it would be proper that the syndics should subscribe for the *Moniteur*, from which they would obtain correct information upon the events of the day, and should communicate the same to the inhabitants of their district.

It would not be less useful, that, whenever any doubt should arise in the public mind upon the propriety of any proceeding of the Government, the syndics should give information thereof to the commandant of the post, who would communicate the same to the Government of the province, whose reply would satisfy all those possessed of integrity and zeal for the public welfare.

Bridges, Roads, and Mounds.

The keeping in repair of bridges, roads, and mounds being indispensable for the facility of transportation, for the convenience of the inhabitants and travellers, and for the preservation of the fruits of the earth, the syndics shall direct their whole attention to that object, with an impartiality and firmness proof against all reproach and worldly considerations.

Now, inasmuch as experience has demonstrated that the greater part, fearful of reproach and of making themselves enemies, have hitherto neglected an object so essential, and have confined themselves at most to communicating to the Government the negligences of certain inhabitants, every syndic who shall be convicted of having neglected to proceed against those inhabitants who shall refuse immediately to repair their bridges, roads, and mounds, in conformity to the

present regulation, shall himself be condemned to make the repairs aforesaid, and shall be responsible for the accidents which may result from his negligence.

The syndics, accompanied by the commandant of the posts and their witness, shall, in the month of July, make a strict examination of all the mounds and roads in their district; shall direct the repairs which each inhabitant is bound to make, of which they, as well as the commandant, shall keep an account; and shall notify the interested that those who shall not have complied with their directions previous to their second visit in December, (in which they shall also be accompanied by the commandant and the same witnesses,) shall be obliged to pay for the labor and food of the negroes of the district who shall be employed for that purpose, by order of and under the inspection of the syndic, besides the fine of one hundred piasters hereinbefore mentioned. The syndics shall require from the inhabitants that their negroes be employed on Sundays for the purpose above mentioned, and they may not refuse in consideration that the price of their labor shall be faithfully paid to the negroes. So soon as a gap shall be perceived, the syndic of the district shall issue orders to the inhabitants of his district to furnish the number of negroes which he may think necessary, in proportion to their means, without waiting for the orders of the commandant or of the Governor. Whoever shall refuse shall be responsible for the ravages occasioned by the waters, which might have been stopped if immediate assistance had been given, and shall besides incur the before-mentioned fine of one hundred piasters for disobedience. If the negroes of the district are insufficient, the syndic shall give immediate information thereof to the Governor or the commandant, who shall issue orders to the inhabitants who might be incommoded by the waters to furnish negroes, in proportion to their means.

The labor and food of the negroes employed in stopping a gap shall be paid by the proprietor of the land, at the rate of four escalins* per day, and one escalin for food.

Holes between the mounds and the river shall be carefully stopped at low water, and filled up by a talus. The drains shall be as far removed as the nature of the ground will permit from the foot of the mound, which they would totally weaken, and would expose to be undermined by the quantity of crawfish which frequent them.

All horses, mules, cows, steers, and hogs, found on the mounds without a conductor, shall be taken up by the proprietor of the mound, and delivered to the syndic, who shall not return the same to the owner, without exacting a fine equal to one half the value thereof, applicable one-third to the proprietor of the mound, another third to the Royal treasury, and the remainder to the expenses of the courts and prison of the district. The appraisement shall be made by two or three capable persons, one of whom shall be appointed by the owner of the animal, another by the proprietor of

* Eleven escalins make one dollar.

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the mound, and, if those two are divided in opinion, a third shall be appointed by the syndic.

Police of Slaves.

The disastrous events proceeding from the present war should, with redoubled force, impress upon the minds of the inhabitants the necessity of attention to their slaves, and of keeping them in that state of content and subordination which would alienate them from the wish of acquiring a freedom which has cost so much blood to those of St. Domingo. To prevent, on the one hand, that excessive indulgence with which the slaves of some plantations are treated, introducing insubordination and insolence, and thereby exhibiting a bad example to the others; and, on the other, to provide against the hardships and inhumanity of some masters of little reflection, who, infringing the first law, that of nature, expose their slaves to the influence of despair; the commandants and syndics are required to direct their whole attention to the internal police of the plantations, and to cause the following directions to be strictly observed, under the penalty of personal responsibility to the Government, and of incurring the reproaches of both their own consciences and of the public, if, by an ill-placed complaisance or neglect, their country should hereafter be exposed to the disasters which have ruined the French colonies:

Every slave shall punctually receive the barrel of corn allowed by the usage of the colony, and which quantity is voluntarily augmented by the greater part of their masters.

The syndics shall take measures to induce the planters of their district to allow their negroes a portion of their waste lands, by which they will not only add to their comforts, but increase the productions of the province, and that time will be usefully employed which would otherwise be devoted to libertinism.

Every slave shall be allowed half an hour for breakfast, and two hours for dinner; their labor shall commence at break of day, and cease at the approach of night. Sundays shall be the privilege of the slaves, but their masters may require their labor at harvest, &c., on paying them four escalins per diem.

The slaves who have not a portion of waste lands shall receive punctually from their master a shirt and trowsers of linen for the Summer, and a great-coat and trowsers of wool for the Winter.

No person shall cause to be given at once, more than thirty lashes to his slave, under the penalty of fifty piasters; but the same may be repeated, if necessary, after an interval of one day.

It is permitted to shoot at an armed runaway negro who shall refuse to stop when required, or who cannot otherwise be taken, even if he be not armed; at a negro who shall dare to defend himself against his master or overseer; and, lastly, at those who shall secretly enter a plantation with intent to steal.

Whoever shall kill a slave, except in one of the cases before mentioned, shall be punished to the extent of the law; and if he shall only wound

him, he shall be punished according to the circumstances of the case, and shall, besides, allow the slave to seek another master; no one being permitted to dispose of the life of a man at his pleasure: as, for example, when a slave, threatened with thirty lashes, shall fly before his master, he is not yet guilty of any crime, and very often has no other intention than to gain time to soften his master, or to implore the pity of some intercessor. With what shadow of justice could the law permit a master, transported with passion, to kill or wound this unfortunate, solely for endeavoring to escape a rigorous chastisement? Intrigues, plots of escape, &c., arising in general from the negroes of one plantation frequenting those of another, the inhabitants are forbidden, under the penalty of ten piasters, to allow any concourse or resort of negroes to their plantations for the purpose of dancing, &c.; and the amusements of their own slaves, which shall be allowed only on Sundays, shall terminate always before night.

A slave shall not pass the bounds of his master's land, without his permission in writing, under the penalty of twenty lashes.

To prevent those disputes and animosities occasioned by the slaves of one planter being chastised by another, no person shall be allowed to punish a negro not belonging to him, without the consent of his master, or the syndic of the district, under the penalty of thirty piasters.

Every slave arrested without a permission or passport shall be sent to the syndic, who shall order that he be punished and returned to his master. If the residence of the syndic be too remote, the person who may have arrested the slave shall give information thereof, in writing, to the syndic, requesting permission to punish him, and shall conform to the tenor of his reply; after which the slave shall be returned to his master.

A slave who shall ride the horse of his master, or any other person, without permission, shall be punished with thirty lashes during two days; that is to say, with an interval of one day.

Slaves are not permitted to be proprietors of horses, under the penalty of the confiscation thereof, one half to the use of the treasury, and the other half to defray the expenses of the courts and prison; and the master who shall tolerate the same shall incur a fine of four piasters for each horse.

Fire-arms are prohibited to slaves, as also powder, ball, and lead, under the penalty of thirty lashes during three days, and confiscation thereof, one half to the Royal treasury, and the other half to defray the expenses of the courts and prison.

An inhabitant may not have more than two hunters; and he shall oblige them to deliver up their arms and ammunition on their return from the chase, under the penalty of fifty piasters if his hunter shall be arrested without a passport, or if his arms and ammunition be found in the camp.

Slaves may not sell anything without the permission of their master, not even the productions of the waste lands allowed them, under pain of twenty-five lashes, and a fine of double the value of the thing sold; and the white person who shall

Digest of the Laws of Louisiana.

have purchased the same shall incur the forfeiture thereof, and shall be brought before the syndic.

No white person, negro, or free mulatto, shall be allowed entrance into a camp without the permission of the master, nor to sell anything to the slaves on the borders of the river, under pain of being arrested by the proprietor of the plantation, and transported with all his merchandise to the residence of the syndic, who shall examine his passport and merchandise, and shall sentence him to a fine of fifteen piasters; and if he have not money sufficient to discharge the same, he shall be confined fifteen days in the prison of the post, or be at the disposal of the commandant.

Rum, fire-arms, and ammunition, shall be seized when in possession of coasters, by the syndic, and delivered to the commandant, who shall sell the same at public auction for the use of the Royal treasury, and to defray the expenses of the courts and the prison.

The syndic shall, from time to time, visit the negro camps in his district, both by night and by day, and shall punish with thirty lashes the slaves belonging to other plantations, who shall be found therein without the permission of both masters. White persons, free negroes, and mulattoes, shall be sent to the commandant of the post, who shall punish them with fifteen days' imprisonment.

When an inhabitant shall be informed that there are runaway negroes in a certain place, he shall give notice thereof to the syndic, who shall have authority to assemble as many as fifteen armed inhabitants, without the permission of the commandant, for the purpose of arresting them; but he shall immediately after give notice thereof to the commandant. Patroles, or other military proceedings, may not be had without the permission of the syndic, under the penalty of twenty piasters.

A slave may not complain to the Government, without having previously made his complaint to the syndic of the district and to the commandant, under pain of thirty lashes upon the public square; but the said persons shall be obliged to receive his complaint, and to grant him strict justice.

Whosoever shall shoot at a slave shall be obliged to give notice thereof to the syndic within four hours, under the penalty of fifty piasters, applicable one half to the Royal treasury, and the other half to defray the expenses of the prison and of the post; the syndic shall advise the commandant of the circumstances within twenty-four hours, and the last mentioned shall give information thereof to the Government within a like term,

under the penalty of fifty piasters, to be incurred by the syndic or commandant, if either shall fail therein.

As there are plantations the masters of which are mostly absent, the syndic shall attend thereto, and shall charge some inhabitant with the care of the slaves, and to make the necessary visits both by night and by day; such cases excepted, no person shall have authority to visit plantations, granaries, negro camps, dwelling-houses, or huts, of whites, negroes, mulattoes, or mestives, without permission in writing from the syndic of the district; by reason that all property is sacred, and every house an asylum, which the authority of the law can only enter for the public advantage.

Free people of color, enjoying by law the same advantages with the other members of the nation with which they are incorporated, may not be molested in the possession of their property, injured, or ill-treated, under the penalties provided by law for the safety and security of the property of white persons.

The syndics and commandants of posts shall be watchful of their conduct, and shall require that deference and attention which is due from them to the members of that society whom they formerly served, and which has admitted them to its bosom. The syndics shall not tolerate any want of attention to the whites, but shall deliver them over to the commandant of the post, who shall punish them with imprisonment, but never by the lash, or by any other corporeal punishment.

The syndics shall also observe that all free people of color labor either in the field, or at some trade within their district, and shall send the indolent and vagabonds to the commandant of the post, who shall fix them at the capital, where they shall be employed upon the King's buildings, and other public works.

In case a syndic shall be sick, or obliged to be absent from the district, he shall commit the duties of his office to a respectable inhabitant, and shall give notice thereof to the commandant of the post.

All fines herein specified shall be equally divided, and applied to the Royal treasury, and to defray the expenses of the courts and prison of the post. Those persons who may be insolvent shall remain in prison as many days as there shall be piasters composing their debt.

BARON DE CARONDELET.

NEW ORLEANS, June 1, 1795.

*Census of the Territory of Louisiana.*No. 2.—*Census of Louisiana in the year 1785.*

Districts.	Whites.	Free people of color.	Slaves.	Total.
Balize to the city, - - - - -	387	67	1,664	2,118
New Orleans - - - - -	2,826	563	1,631	5,028
St. Bernardo - - - - -	584	2	-	586
Bayou St. Jean - - - - -	91	14	573	678
Costa de Chapitoulas - - - - -	1,128	263	5,645	7,036
First German Coast - - - - -	561	69	1,273	1,903
Second German Coast - - - - -	714	5	581	1,300
Catahanose - - - - -	912	18	402	1,332
Fourche - - - - -	333	-	273	606
Valenzuela - - - - -	306	-	46	352
Iberville - - - - -	451	-	222	673
Galveztown - - - - -	237	-	5	242
Baton Rouge and Manchac - - - - -	68	2	100	170
Pointe Coupée - - - - -	482	4	1,035	1,521
Attakapas and Opelousas - - - - -	1,204	22	1,182	2,408
Ouachita - - - - -	198	-	9	207
Avoyelles - - - - -	149	138	-	287
Rapides - - - - -	63	-	25	88
Natchitoches - - - - -	404	8	344	756
Arkansas - - - - -	148	31	17	196
Illinois - - - - -	1,139	18	434	1,591
Natchez - - - - -	1,121	-	438	1,559
Mobile and Tombigbee - - - - -	325	51	461	837
Pensacola - - - - -	384	28	184	596
	14,215	1,303	16,544	32,062

No. 3.—*Island of New Orleans and adjacent settlements.*

	Whites.	Blacks.	Militia.
1. The island of New Orleans, with the opposite margin and settlements adjacent, computed at - - - - -	25,000	25,000	5,000
2. The west margin, from Manchac, including Point Coupée, and extending to the Red river - - - - -	4,000	5,000	800
3. Attakapas, along the seacoast, between the delta of the Mississippi and the western boundary - - - - -	1,600	2,000	350
4. Opelousas, on the north of Attakapas - - - - -	3,750	3,500	750
5. Red river, including bayou Bœuf, Avoyelles, Rapides, and Natchitoches, (the two first bounding on Opelousas) - - - - -	5,000	3,000	1,000
6. Ouachita river, (falling into the Red river from the north) - - - - -	1,200	100	300
7. Concord, a settlement on the margin of the river, opposite to Natchez - - - - -	200	70	40
8. Arkansas river - - - - -	600	-	150
9. New Madrid, and vicinity - - - - -	1,750	50	350
10. Illinois and Missouri - - - - -	4,000	570	1,000
Total - - - - -	47,150	39,220	9,740
NOTE.—The settlements of Baton Rouge and New Feliciana, on the east side of the river, lying between the line of demarcation, lat. 31°, and the Iberville, including some establishments on the river Amite, &c, contain - - - - -	3,000	600	600
	50,150	39,820	10,340

*Census of the Territory of Louisiana.**No. 4.—Census of the districts or posts of Louisiana and West Florida.*

Names and situation of the posts or districts.	Whites.	Free people of color.	Slaves.	Total.
Balize to New Orleans - - - - -	-	-	-	2,388
San Bernardo, or Terre au Bœufs, on a creek running from the English Turn, east, to the sea and Lake Borgne - - - - -	-	-	-	661
City of New Orleans and suburbs, as per detail No. 1 - - - - -	3,948	1,335	2,773	8,056
Bayou St. Jean and Chantilly, between the city and Lake Pontchartrain - - - - -	-	-	-	489
Coast of Chapitoulas, or along the banks of the Mississippi, six leagues upwards - - - - -	-	-	-	1,444
First German Coast, from six to ten leagues upwards, on both banks - - - - -	688	113	1,620	2,421
Second German Coast, from ten leagues, and ending at sixteen do. - - - - -	883	21	1,046	1,950
Catahanose, or First Acadian Coast, commencing at sixteen leagues above the city, and ending at twenty-three, on both banks - - - - -	1,382	-	818	2,200
Fourche, or second Acadian Coast, from twenty-three to thirty leagues above town - - - - -	677	-	464	1,141
Valenzuela, or settlements on the Basin de la Fourche, running from the west side of the Mississippi to the sea, and called in old maps the Fourche, or Rivière des Chilimachas - - - - -	1,797	-	267	2,064
Iberville parish, commencing at about thirty leagues from Orleans, and ending at the river of the same name - - - - -	658	13	386	1,057
Galveztown, situated on the river Iberville, between the Mississippi and Lake Maurepas, opposite the mouth of the Amite - - - - -	213	8	26	247
Government of Baton Rouge, including all the settlements between the Iberville and the line of demarcation - - - - -	958	16	539	1,513
Pointe Coupée and False river behind it, fifty leagues from Orleans, on the west side of the Mississippi - - - - -	547	-	1,603	2,150
Attakapas, on the rivers Teche and Vermilion, &c. to the west of the Mississippi, and near the sea - - - - -	859	58	530	1,447
Opelousas, adjoining to, and to the northeast of the foregoing - - - - -	1,646	-	808	2,454
Ouachita, on the river of the same name, or upper part of the Black river, which empties into the river Rouge - - - - -	-	-	-	361
Avoyelles, on the Red river, about — leagues from the Mississippi - - - - -	336	2	94	432
Rapides on the Red river, about — leagues higher up - - - - -	584	-	169	753
Natchitoches on the Red river, about seventy-five leagues from the Mississippi - - - - -	785	-	846	1,631
Concord, an infant settlement on the banks of the Mississippi, opposite Natchez - - - - -	Unk'n.	-	-	-
Arkansas, on the river of the same name, about twelve leagues from its mouth - - - - -	335	5	48	388
Spanish Illinois, or Upper Louisiana, from La Petite Prairie, near New Madrid, to the Missouri, inclusive, as per detail No. 2 - - - - -	4,948	197	883	6,028
Mobile, and country between it and Orleans, and borders of Lake Pontchartrain - - - - -	-	-	-	800
Pensacola, exclusive of the garrison, not exceeding - - - - -	-	-	-	300
	21,244	1,768	12,920	42,375

MEMORANDUM.—This census is taken from the latest returns, but is manifestly incorrect—the population being underrated. From some places there have been no returns for the last seven years; and, from those made this year, it is easy to see that certain causes induced the inhabitants to give in short returns of their slaves and of their own numbers. The Spanish Government is fully persuaded that the population at present considerably exceeds fifty thousand souls.

Census of the Territory of Louisiana.

No. 5.—Statement of the population of the settlements of Upper Louisiana, with the births, marriages, deaths, stock, and productions of the year 1799.

Names of the settlements.	Whites.	Free mulattoes.	Free negroes.	Slaves.	Total.	Marriages.	Births.	Deaths.	PRODUCTIONS.					Horned cattle.	Horses.	Exports for New Orleans.
									Bushels of wheat.	Bushels of Indian corn.	Pounds of tobacco.	Bushels of salt.	Pounds of lead.			
St. Louis -	601	50	9	208	925	9	52	20	4,300	10,300	1,650	-	-	1,140	215	1,754 packs of shaved skins, of 100 pounds each, valued at - \$70,160
Carondelet -	181	-	-	3	184	-	-	-	3,300	2,760	4,500	-	-	198	45	8 p'ks bear skins 256
St. Charles -	840	-	-	55	895	15	41	11	6,640	12,170	4,053	-	-	1,102	241	18 do buffalo robes 540
St. Fernando -	259	-	-	17	376	5	34	7	5,800	2,350	750	-	-	230	57	2,000 pounds flour - 60
Marais des Liards -	337	-	-	42	379	-	-	-	1,019	1,604	6,800	-	-	629	153	
Marance -	115	-	-	-	115	-	-	-	200	6,370	3,150	-	-	229	125	
St. Andrews -	361	5	27	-	393	-	-	-	730	16,950	5,465	-	-	574	122	
St. Genevieve -	636	1	2	310	949	5	64	14	16,400	21,450	1,999	965	150,000	1,253	268	
New Bourbon -	445	-	1	114	560	-	-	-	1,680	14,300	300	-	20,000	295	83	
Cape Girardeau -	416	105	-	-	521	-	-	-	510	16,200	-	-	-	707	200	
New Madrid -	711	-	-	71	782	-	-	-	47,765	-	-	-	-	1,188	243	
Little Meadow -	46	-	-	3	49	-	-	-	-	2,675	-	-	-	35	-	73,176
	4,748	161	36	883	6,028	34	191	52	88,349	84,534	28,657	965	170,000	7,980	1,763	

MEMORANDUM.

All the fine furs are shipped to Canada, as well as a great quantity of deer and bear skins, where they bring a better price than in New Orleans; and this being a contraband trade, no notice is taken of it in the above account of exports, which is the official one.

MEMORANDUM.

St. Louis is situated on the Mississippi, five leagues below the mouth of the Missouri.

Carondelet is two leagues below St. Louis, on the Mississippi.

St. Charles is on the Missouri, about seven leagues from its mouth, and about six from St. Louis by land.

St. Fernando, or Harissaret, is three or four leagues from St. Louis, in a valley, on one of the roads from St. Louis to St. Charles.

Marais des Liards is four leagues from St. Louis, and about a league to the west of the foregoing.

Marance is on the river of the same name.

St. Andrews is situated about five leagues above St. Charles, on the Missouri.

St. Genevieve is opposite Kaskaskias, and on the banks of the Mississippi.

New Bourbon is about a league below St. Genevieve.

New Madrid is on the Mississippi, fifteen leagues below the mouth of the Ohio.

Little Meadow is seven leagues below New Madrid, on the banks of the river.

*Writs of Error to the Supreme Court.*No. 6.—*Census of the city of New Orleans, exclusive of seamen and the garrison.*

Date.	Quarters.	Whites.	Free people of color.	Slaves.	Total.
1803.	First quarter - - - - -	745	203	546	1,494
	Second quarter - - - - -	891	-	951	1,842
	Third quarter - - - - -	722	787	579	2,088
	Fourth quarter - - - - -	440	219	225	884
	Suburb of St. Charles - - - - -	70	-	170	240
	Suburb of St. Louis - - - - -	380	126	302	808
	Whole number of persons not domiciliated - -	3,248 700	1,335	2,773	7,356 700
		3,948	1,335	2,773	8,056

N. B. This census appears to be incorrect, as, by some unaccountable mistake, the number of free people of color in the second quarter is not included; and, on the whole, the population is thought to be underrated.

APPEALS TO THE SUPREME COURT.

[Communicated to the House, Dec. 29, 1803.]

Mr. BOYLE, from the committee to whom was referred a resolution directing an inquiry into the expediency of vesting the powers usually exercised by a court of equity in the judges of the United States, within the Indiana and other Territories, and also into the expediency of allowing writs of error and appeals from the judgments and decrees of said judges to the Supreme Court of the United States, made the following report:

The courts without equitable jurisdiction will inevitably, in some instances, become the instruments of iniquity, instead of the administrators of justice. Fraud, accident, and hardship, ingredients in many of those transactions of human life, which constitute the basis of litigation; entrenched within legal forms and veiled with specious, but deceitful appearances, are many times not within the reach of a tribunal, vested with common law powers only. To develop, and relieve against them, an equitable jurisdiction is necessary. It may be proper also to observe, that persons may avail themselves of the powers of a court of equity to obtain more complete relief, by coercing the specific execution of contracts fairly made, and rescinding those that are bottomed upon deceit, than a court of law is competent to grant; add to that, *trusts*, which frequently become sources of forensic controversy, are matters properly cognizable in courts of equitable jurisdiction.

The committee, therefore, have agreed respectfully to submit to the consideration of the House the following resolution:

Resolved, That it is expedient to vest the powers usually exercised by a court of equity in the judges of the United States in the Indiana and other Territories.

As to the second matter referred to them for their inquiry, the committee beg leave to observe, that the attainment of a uniformity of decision in any section of country subject to the same laws and usages, is one of the principal objects of the institution of a Supreme Court, with appellate jurisdiction. Where there are many courts dispersed over a country, though subject to the same laws and usages, yet, without one common tribunal, which shall have power to revise and correct the judgments and decrees of the inferior courts, their decisions will be various and contradictory. But to attain this uniformity of decision in each Territorial Government, it is not necessary to allow writs of error or appeals to the Supreme Court of the United States, because each Territory has a supreme court (relatively speaking) within itself, which is composed of three judges and has, or may have, appellate jurisdiction over all others erected in the Territory, whereby it may preserve that uniform rule of decision so desirable.

Correctness, or propriety of decision, is the only other object the attainment of which can be aided by allowing writs of error and appeals from the Territorial courts to the Supreme Court of the United States. The committee are not informed, nor do they believe, that there is any unusual want of confidence in the courts of the Territories. They are aware that hardship and injustice will result to individuals in some instances from the erroneous decisions of those courts, but it has not occurred to them that an appeal will insure infallible relief. Infallibility is not the attribute of any earthly tribunal. So vast is the distance from the Territorial courts to the Supreme Court of the United States, that the mischief resulting from the necessary delay, expense, and inconvenience of prosecuting or defending writs of error and appeals cannot, in the opinion of the commit-

Direct Tax.

tee, be compensated by any advantage to be derived from the revision of the courts of the Territories by the Supreme Court of the United States.

It is obvious to those who have had an opportunity of observing the spirit which often prevails with litigants, that the right of appeal would sometimes be made use of as an instrument of vexation and oppression, where the distance is so great from the inferior to the superior court.

The committee, therefore, upon the second matter referred to them, agree to submit the following resolution:

Resolved, That it is inexpedient to allow writs of error and appeals from the judgments and decrees of the courts of the Indiana and other Territories to the Supreme Court of the United States.

DIRECT TAX.

[Communicated, to the House, Dec. 22, 1803.]

Documents accompanying "A bill further to amend the act, entitled 'An act to lay and collect a direct tax within the United States.'"

NOVEMBER 12, 1803.

SIR: I am instructed by the Committee of Ways and Means to submit the enclosed petition to you, and to request such observations upon it as you may deem material. I have the honor to be, &c.

JOHN RANDOLPH.

HON. ALBERT GALLATIN,
Secretary of the Treasury.

TREASURY DEPARTMENT, Dec. 5, 1803.

SIR: I have the honor to return the petition of a number of owners of unoccupied lands in the State of New York, together with remarks thereon, in which the propriety of some further modifications of the laws laying a direct tax is submitted to the Committee. I have the honor to be, &c.

ALBERT GALLATIN.

JOHN RANDOLPH, Esq.,
Chairman Committee Ways and Means.

Remarks on the petition of sundry inhabitants of New York, complaining of the operation of the law for levying a direct tax.

The inconveniences complained of by the petitioners apply to unoccupied lands, and relate either to the assessment or to the payment of the tax.

It is urged that the vague and uncertain descriptions of the lands assessed, with the omission of the names of the owners in many instances, render it difficult, and sometimes impracticable, to identify the estate to which the tax was attached.

It will be recollected, on that head, that it was enacted by the ninth section of the act "to provide for the valuation of lands and dwelling-houses, and the enumeration of slaves within the United States," that all persons in the United States owning or possessing any dwelling-houses, lands,

or slaves, should deliver to the assessor within whose assessment district they resided, separate written lists specifying such houses, lands, and slaves, owned by them respectively in each and every assessment district of the State, or of any other State, and designating the State, county, parish, township or town where the property laid, the quantity of land, name of the owner, &c. And it was further provided, by the 12th section of the same act, that all lists of property, taken with reference to any other assessment district than that in which the owner or possessor resided, should be immediately transmitted to the commissioner superintending the district, and from him to the principal assessor of the district within which such property was situated.

From thence it appears that, except in the case of sickness, or absence from his assessment district at the time fixed for delivering the lists, the uncertainty of the descriptions of lands is principally chargeable to the neglect of the owner himself, whose duty it was to prepare and deliver correct and descriptive lists of his property either lying in his own or any other assessment district. For it was only in the case when no such list had, in the manner provided by the act, been transmitted to the principal assessor of a district, that it became the duty of the assessor of such district to prepare themselves, in conformity with the section of the act, lists of houses, lands, and slaves, situated in the district, and not owned or possessed by any person residing within the same.

In that case, the assessors must have prepared the lists and described the lands in the best manner they could from the information they were able to obtain. In many instances, they may have mistaken the names of the owners, and when the owners were altogether unknown they have designated the land only by the number of the lot and by the name of the township or original patent. And it cannot be doubted that, either from want of information or from other causes, many vague, incorrect, and inapplicable descriptions of land are to be found in the lists of unoccupied lands, which have been or may hereafter be sold for non-payment of the tax, as well in the State of New York as in all other States which contained large tracts of such lands.

It is, however, evident that, it is impracticable, at present, and especially in cases where the land has already been sold, to rectify the mistakes or incorrect descriptions of the assessment: and, however injurious the result may be to the parties, it does not seem, for the abovementioned reasons, that they have, in that respect, a right to expect redress from Government. It must also be observed, that when the description of the land, without any mention of the owner, did not apply to the tract intended to be taxed; either (as has happened in many instances) the land could not be sold, and the tax is lost to the United States; or, the sale could vest, in the purchaser, but a precarious title to the real tract; and in cases where lands were assessed in the name of other persons than the owners, it has been expressly provided by the 5th section of the act "to amend an act entitled 'An act to lay

Sale of the Public Lands.

and collect a direct tax within the United States," that copies of the lists of property assessed, statements of the amount of taxes due thereon, and notifications to pay the same should, before the collectors could proceed to sell, be published for sixty days in four gazettes of the State, if there were so many. From which last provision it appears that when such publication has been omitted, the sale was illegal, and that when it has taken place, the original proprietors may have recourse to it, in order to ascertain the amount of their taxes, even when, as is suggested, the collectors refuse to communicate lists of the lands sold by them.

The petitioners, in the next place, complain that they cannot avail themselves, by a timely repayment of the tax, costs, and interest, of the right reserved to them by law of redeeming, within two years after the sale, those lands which may have been sold for non-payment of the tax; because the collectors to whom that payment was directed to be made, allege in some instances that their office no longer exists, and sometimes refuse to exhibit their lists of lands sold; and because the supervisor has no means whereby to compel such collectors to transmit transcripts of those lists, in conformity with their instructions.

The law appears to be defective as well in that respect as in that no mode has been provided for conveying the lands sold and remaining unredeemed; and although the mode of redress pointed out by the petitioners may not afford complete relief in all cases, nor perhaps be adapted to its full extent consistent with the rights already vested in bona fide purchasers, its general principles do not seem objectionable, and will enable the original proprietors in many instances to redeem their lands.

The following provisions are suggested to effect that object.

1. That the supervisor or officer to whose office the duties of supervisor have been annexed, and, in those States where no such officer may exist, the marshal, should alone be authorized to make deeds for lands sold for non-payment of taxes and remaining unredeemed.

2. That the collectors should within — months after passing the proposed act, when the land has been previously sold, and within — months after the completion of sales made subsequent to the date of such act, transmit to the supervisor, officer acting as supervisor, or marshal, as the case may be, correct transcripts of the lists of lands sold for non-payment of taxes; specifying the land as described by the assessment, the quantity of land sold, the amount of tax, charges and costs for which it was sold, and the name of the purchaser; and designating also such tracts of said lands which may have been redeemed, in conformity with the law, by the original proprietors, or for their benefit; and that they should also, within the same time, pay over to the said officer the amount of moneys paid by or for such proprietors, and which shall not by the collectors have been already repaid to the purchasers; under penalty of — dollars in case of failure on their part either of transmitting

such transcripts or of paying over such moneys; and that a reasonable allowance, to be repaid in case of redemption by the original proprietor, should be made to them for transcribing and transmitting those lists.

3. That no deeds should be executed to the purchasers of lands thus sold, unless such lands are stated in the transcripts received from the collectors, or unless the purchaser shall have delivered within a limited time to the officer authorized to make deeds, a receipt from the collector for the purchase money, dated within not more than — subsequent to the sale, and specifying distinctly the original description of the land assessed and the quantity sold.

4. That deeds should be executed to the purchaser by the officer authorized to do the same, provided that the preceding provision shall have been complied with, unless the original proprietor, or some person in his name and for his benefit, shall within — after passing the act (or after the date of the sale, or after the receipt either of the transcript, from the collectors, or of the collector's receipt from the purchaser) have either repaid to the officer the amount of the tax, charges, costs and interest, as directed by law, or produced to him a receipt from the collector for such repayment, dated within not more than — subsequent to the passing of the proposed act: in which case the purchaser shall be entitled to receive the said amount from the officer or collector accountable for the same.

The three first provisions do not appear to be liable to any well grounded objection; but, in order to fix the details of the last, it is necessary previously to decide the question whether under the terms of the existing laws, a right to the land absolutely vests in the purchaser at the expiration of two years after the sale, so as to preclude Congress from extending the time of redemption beyond that term. The modifications of which the provision, fixing the time when deeds for lands unredeemed may be made, is susceptible, must necessarily depend on the opinion which shall be formed by the committee on that subject.

Respectfully submitted.

ALBERT GALLATIN.

PUBLIC LANDS.

[Communicated to the House, January 23, 1804.]

Mr. NICHOLSON made the following report:

The committee appointed to inquire into the expediency of amending the several laws providing for the sale of the public lands of the United States, and to whom were likewise referred several petitions from sundry persons residing in the State of Ohio, on the same subject; submit an additional report, in part, and recommend to the House the adoption of the following resolutions:

1. *Resolved*, That from and after the — day of — next, the public lands of the United States lying north of the river Ohio, shall be sold on payment of one-twentieth part of the purchase-money at the time of

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making the purchase, and the remainder within sixty days thereafter, the first payment to be forfeited, and the sale to be void, unless the second payment is made within the time above limited.

2. *Resolved*, That from and after the said — day of — next, those townships which have heretofore been sold in half sections, may be purchased, at the option of the purchaser, either in half or quarter sections; in which last case the half sections shall be divided, on application and at the expense of the purchaser, into two equal parts, by a line running due east and west.

3. *Resolved*, That from and after the said — day of — next, those townships which have heretofore been sold in entire sections, may be purchased either in entire or in half sections, at the option of the purchaser; in which last case the section shall be divided into two equal parts, on the application and at the expense of the purchaser, by a line running due north and south.

4. *Resolved*, That the sections heretofore reserved in the Steubenville district, and in the tract lying between the two Miamies, south of the twelfth range of townships, shall, from and after the — day of — next, be offered for sale on the same terms, and in the same quantities as the other lands within the same townships respectively.

5. *Resolved*, That the public lands north of the river Ohio, and above the mouth of Kentucky river, including the reserved sections mentioned in the preceding resolution, shall be offered for sale in half sections and in quarter sections, before the said — day of — next, at the respective land offices, to the highest bidder, provided that no half section shall be sold for less than — per acre, and no quarter section for less than — per acre, to be paid within forty days after the day of sale.

6. *Resolved*, That the said lands may, after the said — day of — next, be purchased at the respective land offices at the rate of — per acre, for each entire or half section, and at the rate of — per acre for each quarter section.

7. *Resolved*, That no interest shall be charged to persons who have purchased, or who, before the said — day of — next, shall purchase any of the said lands, in pursuance of the act of the 10th day of May, 1800, and shall not have alienated the same; provided that they have discharged, and shall hereafter discharge, the instalments due on the said lands, on or before the days on which the same have or may become due; but the interest shall be demandable in conformity with the provisions of the said act, from the date of the purchase, on each instalment which shall not have been paid on the day on which the same became or shall become due.

8. *Resolved*, That certificates receivable in payment for lands, shall be granted to persons entitled to the benefit of the last preceding resolution, and who shall have completed their payments before the passing of this act, for a sum equivalent to the interest which has been charged them, and from the payment of which it is intended they should be exonerated.

9. *Resolved*, That the authorities vested in, and the duties enjoined on, the surveyor general, shall extend to all the public lands to which the Indian title has been extinguished, north of the river Ohio, and east of the river Mississippi.

10. *Resolved*, That whenever any of the public lands shall have been surveyed, in conformity with the exist-

ing laws, they shall be divided by the Secretary of the Treasury into convenient districts; and a deputy surveyor shall, with the approbation of the said Secretary, be appointed for each district by the surveyor general, whose duty it shall be to run and mark such lines as may be necessary for dividing and classing the lands sold by the United States; for which services they shall receive — dollars for every mile thus surveyed and marked, from the purchaser of such lands.

11. *Resolved*, That from and after the — day of — next, each of the registers and receivers of the land offices heretofore established by law, shall, in addition to the commission heretofore allowed, receive one-half per cent. on all the moneys paid for public lands, and an annual salary of five hundred dollars, the register and receiver of the land office at Marietta excepted; the annual salary of each of whom shall be only two hundred and fifty dollars.

12. *Resolved*, That from and after the — day of — next, the fees payable by virtue of the act of the 10th of May, 1800, for surveying expenses, patents, entry of lands, and certificates granted by the register, shall no longer be demandable from and paid by the purchasers.

13. *Resolved*, That the two tracts of land lately purchased from the Indians, on the Wabash, and between the rivers Mississippi and Ohio, shall be surveyed and offered for sale, in the same manner, and on the same terms, as the public lands north of the Ohio, and above the mouth of the river Kentucky, and in conformity with the preceding resolutions.

Letter from the chairman of the committee appointed to inquire into the expediency of amending the several acts providing for the sale of the public lands of the United States, to the Secretary of the Treasury.

DECEMBER 1, 1803.

SIR: The committee appointed to inquire into the expediency of amending the several laws providing for the sale of the public lands of the United States, discovering that a variety of objects embraced by the several petitions referred to them, are connected with, and may materially affect, the revenue, they have directed me to submit to you the following propositions, and to request such information as the nature of the subject may require.

Will the sales of the lands be retarded or accelerated, and how will the revenue be affected?

1. By selling the lands in smaller tracts?

2. By charging no interest on the amount of sales, until after the purchaser has made default in payment?

3. By selling for cash instead of credit now authorized by law?

4. By reducing the price of the public lands?

5. By making grants of small tracts to actual settlers and improvers?

As, from the nature of your official duties, your attention has necessarily been frequently drawn to the several laws providing for the sale of the public lands, the committee will thank you to point out any defects which may have occurred in carrying them into effect; and to suggest such amendments as may appear to you proper to remedy existing inconveniences.

I have the honor to be, &c.

Sale of the Public Lands.

Accompanying a report of the committee to whom were referred, on the 22d of November last and 4th instant, the petitions of sundry residents and purchasers of land in the State of Ohio:

TREASURY DEPARTMENT, Jan. 2, 1804.

SIR: In conformity with the request contained in your letter of the first ultimo, I have the honor to communicate such observations respecting the proposed alterations in the laws providing for the sale of public lands, as have been suggested by their operation.

Under the present system, the public lands north of the river Ohio and east of the river Muskingum, are sold only in sections of one mile square, and containing six hundred and forty acres each. The other lands north of the Ohio, and above the mouth of the Kentucky river, are sold, one-half in sections, and the other half in half sections, containing three hundred and twenty acres each. No provision has as yet been made, by law, for the sale of the reserved sections which are interspersed throughout those lands, nor for that of the tracts lying below the mouth of Kentucky river, and lately purchased from the Indians; one of which is situated on the Wabash river, around St. Vincennes, and the other between the Mississippi and Ohio river, above the confluence of these two rivers.

The price at which all the lands offered for sale may be purchased, is two dollars per acre, payable in specie or in six per cent. stock at par, and in four equal instalments, the first of which must be paid at the time, and three others within two, three, and four years after the time of making the purchase. In every instance, except in the case of persons who had made contracts with Judge Symmes, for lands lying between the two Miamies, interest at the rate of six per cent. a year is charged on the three last instalments, from the date of the purchase; and in every case a discount, at the rate of eight per cent. a year, is allowed for prompt payment.

The cash price of the lands is, therefore, only one dollar and eighty-four cents per acre, except for lands lying between the two Miamies, for which contracts had been made with Judge Symmes, which may be paid for at the rate of one dollar and sixty-four cents per acre. It follows from thence, that if all the lands were sold on the same terms as the last-mentioned, that is to say, without charging interest until after the instalments had become due, it would operate a reduction on their cash price of twenty cents per acre.

The reasons which probably influenced the Legislature in fixing a price so much beyond what had been the usual terms on which vacant lands had theretofore been granted in the several States, were a wish to prevent monopolies and large speculations, and at the same time to secure a permanent revenue to the Union. The first object has been fully obtained: and, although the proceeds of the sales have not been commensurate with the vast increase of population, more than nine hundred thousand acres have been sold in three years; on which near eight hundred

thousand dollars have been received, and about eleven hundred thousand remain due by the purchasers.

It must, however, be observed, that the price of public securities, at the time of passing these laws would have reduced the real cash price of lands at about a dollar and an half per acre, and that the sales have been effected by the competition of lands held by individuals in the Connecticut reserve, in the military tracts, and in the Kentucky, and which might generally be purchased for a less price than that set on the public lands.

A considerable reduction of the price might be considered as a waste of the public property, and as promoting migration beyond its natural and necessary progress. It would certainly be injurious to private landholders, and by throwing the lands into the hands of a few individuals, prevent that gradual and equal distribution of property, which is the result of the present system. To reduce it only to what may be considered as the market price which actual settlers give for small tracts in similar situations, would only satisfy the demand for land created by the existing population, and without promoting migrations or speculations on a large scale, would increase the receipts in the Treasury: provided that reduction was connected with another measure which is considered as of first importance for the security of that branch of the revenue.

It has been observed that about eleven hundred thousand dollars are due to the United States on account of preceding sales. Great difficulties may attend the recovery of that debt, which is due by near two thousand individuals, and its daily increase may ultimately create an interest hostile to the general welfare of the Union. It appears extremely desirable in every point of view, that lands should hereafter be sold without allowing any other credit than that of forty days now given for the payment of the first instalment; and, as that provision might be considered injurious to that part of the community who are not able to make large payments, it would seem proper to connect it with a moderate reduction in price, and with a permission to purchase smaller tracts than is now allowed by law.

Supposing that the lands which are now sold in entire sections, should be offered for sale in half sections; that those which are now sold in half sections should be offered for sale in quarter sections, and that the price of entire and half sections should be reduced to one dollar and twenty-five cents, and that of quarter sections to one dollar and an half per acre, it is believed that the benefits resulting from the present system would not be impaired, and that several important advantages would be obtained.

1. The price being still as high as that at which lands held by individuals, in similar situations, are generally sold, and higher than can be afforded for any other purpose than that of improving the land or securing it for the use of the purchaser's family, monopolies and large speculations would be as effectually prevented as under the existing provisions.

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2. The poorest individuals, as they cannot, at present, purchase less than three hundred and twenty acres, must, in order to become freeholders, be able to pay one hundred and sixty dollars, and become bound for four hundred and eighty more, payable within four years; and it is proper to observe that, if they have no other resources, it is almost impossible that they should, during the first four years of a new settlement, draw the means of payment from the produce of the land. By the proposed alteration, a man might, by the payment of two hundred and forty dollars, acquire a freehold of one hundred and sixty acres, without encumbering himself with any debt whatever. The difficulty of raising eighty dollars more at first, is unimportant, if it shall be admitted that the subsequent payments must at present be provided for from other resources than those arising from the land itself: and, in every other respect, the purchaser will evidently be placed in a much more desirable situation.

3. Whatever revenue may be derived from that source will be collected in the most simple manner, and will be completely secured. There will be no outstanding debts, and the interest of every new purchaser will become identified with that of the Union.

4. It has already been observed that the sales have not, by any means, been commensurate with the demand for land and the increase of population; they have been limited partly to the competition of other lands in the market, and partly by the existing means of payment. Under the system, altered as has been suggested, they would be limited only by the last cause, and be altogether regulated by the amount of circulating medium acquirable by the purchasers. It is evident, indeed, that it would be more easy to sell 300,000 acres at a dollar and a third, than 200,000 acres at two dollars per acre; and no doubt is entertained that the revenue would be not only secured, but also increased by the proposed alterations.

The only difference to the United States will be, that they will transfer the property of a greater quantity of land for the same sum of money than they do at present. The estimated revenue of \$400,000, derived from that source, is predicated on annual sales of 200,000 acres at two dollars, or, rather, of about 212,000 at one dollar and eighty-four cents per acre; 266,666 acres at one dollar and an half, or 320,000 at one dollar and twenty-five cents per acre, would produce an equal sum. It would, therefore, under the present alterations, cost annually to the United States about one hundred thousand acres more than at present, to raise a revenue equal to that which may be collected under the existing regulations. Compared with the quantity of land north of the Ohio and east of the Mississippi, not less certainly than one hundred and fifty millions of acres, the soil of which belongs to the United States, that difference is so trifling; and the effect which, in that respect, may result from the alteration so distant, that neither of them seems to afford sufficient ground of objection.

A more serious difficulty will arise from former purchasers, who may complain that they should be left in a worse situation than those who shall purchase under the new arrangement. It is true that those persons who have had the selection of the most eligible spots in point of situation and of soil; yet, under all circumstances, and also in order to secure punctual payments, it might be expedient to release them from the payment of interest until after their instalments had become due. That provision, which it is believed would be perfectly satisfactory, should be extended only in favor of those who shall discharge those instalments with punctuality, and who have not alienated the property. In the few cases where the purchasers have already completed their payments, certificates receivable in payment for land might be given to them for the sums which may have been charged for interest.

It is believed that the alterations which have been suggested will enable a great portion of the actual settlers to become purchasers; but the principle of granting them a right of pre-emption, exclusively of the abuses to which it is liable, appears irreconcilable with the idea of drawing a revenue from the sale of lands. Nor would the reduction of price, and especially the sale in smaller tracts, be an eligible measure, so far as respects the revenue, unless connected with a suppression of the credit which is now given to purchasers.

Should those outlines be adopted, it may be proper to provide that, before the reduction either in the price or in the size of the tracts shall take place, all the lands shall be offered at public sale, as on a similar occasion had been directed by the act passed on the 10th of May, 1800; and some other modifications of less importance, though not immediately connected with that part of the subject, may at the same time be taken under consideration.

The powers of the Surveyor General extend only over the lands lying north of the river Ohio and above the mouth of the river Kentucky; it seems proper, on account of the late purchases, that they should be extended over all the public lands lying north of the Ohio and east of the Missouri; for the surveys of the lands above the mouth of the Kentucky, to which the Indian title has been extinguished, being nearly completed, it is hardly necessary to create a new office for the others; and it would be useful to provide that that officer should also ascertain, by astronomical observations, the situations of some of the most important points of that part of the country.

The surveys are now executed by assistants, appointed by the Surveyor General, whose offices cease with the completion of their work. For the purpose of making legal re-surveys, when called on by the parties; of surveying and marking the lines which, in conformity with the mode presented by law, have been left open; and, also, of sub-dividing the tracts into quarter sections, in pursuance of the proposed modifications, it would be eligible to have "district surveyors" appointed, who should receive for their several ser-

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vices stated fees, to be paid by the parties for whose benefit they may be rendered. That arrangement, exclusive of other advantages, would preclude the necessity of any advance from the Treasury for the subdivision of lands into quarter sections.

Whatever price it may be thought proper to fix on the lands, it will be more simple and convenient for the purchasers; that, with the exception of the last mentioned expense, the several fees now paid to the United States for surveying expenses and for entry and certificates, and which, in the purchase of an half section, amount, altogether, to about three cents and an half per acre, should be incorporated with the price.

The receivers of public moneys receive now one per cent. on all the moneys paid into the Treasury, and the registers one-half per cent. on the same, besides the fees, amounting to two-thirds per cent. more, the suppression of which is submitted. Those compensations are much lower, in proportion to the revenue collected, than those allowed to most of the officers employed in the collection of the other revenues of the Union, and appear inadequate to the responsibility attached to the officers and to the rate of talents and knowledge necessary to discharge their duties. The propriety of increasing the commission of both officers one-half per cent., and of giving to each of them a small annual salary, as an equivalent for clerk hire and office rent, is respectfully submitted. The salary might in that instance be \$500 to each officer, those of the Marietta district excepted, for whom \$250 would be sufficient. This, on account of the suppression of the register's fees, would give a greater increase to the registers; which, considering the risk attached to the safe-keeping of the public moneys, appears reasonable.

The expediency of excluding the reserved sections from the sales is doubtful, as the destruction of timber is perhaps more than equivalent to the supposed increase of value, and it is particularly complained of in the Steubenville district, and in the tract lying between the two Miamas, where the greater part of the adjacent lands is sold and occupied.

The preceding observations have been made only in relation to the lands north of the river Ohio. It would be expedient to apply many of the regulations which have been submitted to the public lands south of the State of Tennessee, and I will beg leave to make a separate communication respecting the operation of the law passed during the last session on that subject.

I have the honor to be, &c.

ALBERT GALLATIN.

Hon. JOSEPH H. NICHOLSON, *Chairman, &c.*

INDIANA TERRITORY.

[Communicated to the House, Dec. 29, 1803.]

Mr. LUCAS, from the committee appointed on the eighth instant, to whom was committed the

bill sent from the Senate, entitled, "An Act to divide the Indiana Territory into two separate governments," made the following report:

That, by the ordinance for the government of the territory north of the river Ohio, it is stipulated that when any of the three divisions, pointed out to form separate States, shall contain 60,000 inhabitants, that division shall become a State in the Union, and have a right to exercise and enjoy a form of government free and republican. That it appears that nearly all the people contemplated to be governed by a territorial government, according to the bill from the Senate, are within the boundaries pointed out by the ordinance to form the State, which is now called the State of Ohio, and that they have a right to be a part of said State, and to be governed in conjunction with the people of said State, until Congress shall think proper to make a State of that and the adjacent country, agreeably to the said ordinance. Of course your committee cannot recommend to the United States, to take upon themselves, at this time, the expenses of a separate territorial government over that part of the country.

From the foregoing considerations, your committee respectfully submit their opinion, that the said bill ought not to be passed by this House.

FISHERIES.

[Communicated to the House, Jan. 3, 1804.]

Mr. HUGER, from the committee to whom was referred on the 15th of November last, "the report of the committee appointed at the last session of the last Congress on so much of the Message from the President of the United States, as relates to the fostering of the fisheries of the United States," with instruction to inquire, whether any, and if any, what measures are necessary for encouragement of the whale and cod fisheries, made the following report:

That they have taken into consideration the report of the committee made to the last Congress, on the subject of the fisheries; that they coincide in opinion with that committee, as to the importance of the fisheries; and find the facts stated by them, and the inferences they have drawn from those facts, to be generally correct. The additional information, which has been obtained, leads them, moreover, to believe, that the conjecture hazarded in the above report, to wit: "that the cod fisheries have gained ground since the Revolution, more especially since the present Government first went into operation, whilst our whale fisheries, on the other hand, have, for some time past, been more or less on the decline," is well founded.

The documents marked A, B, C, D, which have been received from the Treasury department, and which the committee beg leave to include as a part of their report, seem to corroborate this opinion.

According to the document A, there were, in

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1799, 26 vessels and 5,055 tonnage; in 1800, 17 vessels and 2,814 tonnage, and in 1801, only 15 vessels and 2,349 tonnage employed in the whale fishery; so that there was evidently a gradual and annual decline in this branch of business.

The document C, gives the quantity of oil, of spermaceti candles, and whalebone, exported from the United States during the 12 years preceding the year 1802. From this it appears, that, in the year 1791, there were exported 134,595 gallons spermaceti, and 447,323 gallons whale oil, 182,400 pounds spermaceti candles, and 124,829 pounds whalebone; but in the year 1802, only 28,470 gallons spermaceti, and 379,976 gallons whale oil, 135,637 pounds spermaceti candles, and 80,334 pounds of whalebone. During the intermediate period, the quantity of these articles, the productions of the whale fisheries, exported from the United States, varied considerably; the greatest quantity of each specific article, exported in any viz: of spermaceti oil, 221,762 gallons; of whale oil, 1,176,650; of spermaceti candles, 290,666 lbs., of whale bone, 452,127 pounds. The annual quantity on an average for twelve years, from 1791 to 1802, inclusive, of each article is, in round numbers, of spermaceti oil, about 106,493 gallons; of whale oil, 573,941 gallons; of spermaceti candles, 197,967 pounds; and of whalebone, 191,334 pounds. It may be proper to add, that there would seem (from document B,) to have been a somewhat greater number of vessels and larger quantity of tonnage employed in the whale fisheries during the last than the two preceding years—20 vessels and 3,201 tons having been employed in this business during that year.

With respect to the cod fisheries, the above quoted document C. proves, that this branch of our fisheries has been, though slowly, yet gradually progressing. In 1791, there were 333,237 quintals of dried and 57,424 barrels of pickled fish exported from the United States, and the quantity of these articles annually exported, has annually increased from that period to the year 1802; when 440,954 quintals of dried and 75,819 barrels, and 13,229 kegs of pickled fish were exported from the United States. The average quantity of these articles exported annually during this period, was, of dried fish 402,226 quintals and of pickled, fish 61,743 barrels; to which is to be added during the last seven years, an annual average exportation of 10,125 kegs of pickled fish. Agreeably to the report made to the last Congress on this subject, there were employed in the cod fishery in 1800, twenty-five thousand tons of shipping and 3,840 men; on an average of ten years preceding, rather upwards of 33,000 tons of shipping and somewhat less than 5,000 men. In the year 1802, (document B) there were 1,140 vessels, 39,399 tons of shipping, and 4,533 men employed in the same fisheries, exclusively of vessels and boats under the size of five tons, and the men navigating them, the number of each of which, the committee have reason to believe, has of late years considerably increased.

Such is the least imperfect view of the subject referred to them, which the committee find them-

selves enabled to present to the House. As the official information with respect to the fisheries heretofore received at the Treasury Department, does not appear, however, to have been as full and as satisfactory as might perhaps be desired, the committee have ventured to suggest the propriety of a more detailed account of their actual state being required annually from the proper officers, and they doubt not but that necessary steps will accordingly be taken by that department to carry this desirable object into effect.

In the mean time, the committee beg leave to state, in compliance with the instruction given them by the House, "to inquire, whether any, and if any, what measures are necessary for the encouragement of the whale and cod fisheries"—with respect to the last. (i. e. the cod fishery,) that as it seems to have been gradually progressing under the present laws and regulations, they deem it unnecessary, at this time, to make any change in them, or to propose any further measure in regard to the cod fishery; unless the House should, in their wisdom, think proper to adopt the resolutions submitted to the House of Representatives at the last session of Congress. It having, indeed, been suggested to them, that there was a larger proportion of foreign fish imported into the United States than they were aware of, the committee had it in contemplation to propose an increase of duty on foreign fish. But understanding that a proposition to the same effect will ere long be submitted to the House from another quarter, they deem it unnecessary to interfere further in the business than to express their approbation of the measure.

The whale fishery, on the other hand, presents itself under a much less favorable aspect, it having been, for some years past, more or less on the decline. And yet there is no branch of industry whatever, perhaps, more highly important to the public. Strongly impressed with this truth, the committee think it a point of true national policy to afford it every encouragement, and to endeavor, as much as possible, to invigorate and reanimate it. They are perfectly aware, however, of the many demands on the Treasury, and feel a strong disinclination to draw unnecessarily on the public funds at this particular period. Yet believing that, in the critical situation in which the whale fisheries appear to be placed, some little encouragement, similar to that which seems to have had so beneficial an effect on the cod fisheries, might turn the scale, and give new life to this interesting branch of our national industry, they venture respectfully to submit to the House the following resolution:

Resolved, That there shall be paid to every vessel, carrying on the whale fisheries, for each and every ton of such vessel's burden, if actually employed at sea, on one and the same voyage, in the prosecution of the said fisheries, at least —, and not exceeding — months, the sum of — cents; if at least — and not exceeding — months, the sum of — cents; if at least — and not exceeding — months, the sum of — cents. And if so employed at sea in one and the same voyage

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during — months and upwards, — cents: *Provided, however,* That no one vessel shall receive for any one voyage, a greater sum than — dollars.

YAZOO CLAIMS.

[Communicated to the House, Jan. 7, 1804.]

Mr. NICHOLSON, from the Committee to whom were referred the memorials of Alexander Moultrie, of South Carolina, in behalf of himself and others, styling themselves "The South Carolina Yazoo Company," and of William Cowan, agent of the Virginia Yazoo Company, made the following report:

It appears from the memorials, and from the documents submitted with them, that, on the 21st day of December, 1789, the Legislature of the State of Georgia passed an act to dispose of certain vacant lands lying within that State, by which it was enacted that the tract of country lying between the Mississippi and Tombigbee rivers, and extending from the parallel of latitude which crosses the Mississippi at Cole's Creek, to the northern boundary of the State, together with a third tract, lying on the Tennessee river, should, for two years from and after passing the act, be reserved, as a pre-emption, for three companies, styled the "South Carolina Yazoo Company," the Virginia Yazoo Company," and the "Tennessee Company;" and that the Governor should issue grants for the said tracts, according to certain boundaries defined in the act, to these companies respectively, if they should, within two years, pay into the Treasury of the State the following sums, viz: the South Carolina Yazoo Company, the amount of \$66,964; the Virginia Yazoo Company, the amount of \$93,741; and the Tennessee Company, the amount of \$46,875.

It further appears from the statements exhibited, that the South Carolina Yazoo Company, on the 13th August, 1790, paid into the Treasury of Georgia, in bills of credit, the sum of £630 18s.; and on the 11th September, 1790, the sum of £500 in paper medium, making in the whole, £1,130, 18s., in part of the purchase money; and that on the 19th of December, 1791, the said company made a tender of the balance to the Treasurer of the State. This tender was made, as is alleged, partly in specie, partly in South Carolina paper medium, and partly in Georgia certificates, but was rejected by the Treasurer, either upon a presumption that the law itself did not authorize the payment to be made in this description of paper, or in pursuance of a resolution of the same Legislature, passed in June, 1790, directing the Treasurer to receive, after a certain day in the month of August following, payment for these lands only in gold or silver, or in the paper medium of the State.

The Virginia Yazoo Company, in a short time after passing the act, (but when, not stated,) paid the sum of \$1,515, in the paper currency of the State, as a part of the purchase money, and on the 12th of December, 1791, made a tender of the

balance to the Treasurer, in State certificates, and orders on the Treasury for liquidated claims. This tender was also refused, as it is presumed, for the same reason which governed in the other case, as above stated.

In consequence of the neglect or refusal on the part of these companies to pay, within the stipulated period of two years, in such description of money as the Treasurer of the State conceived himself authorized to receive, no grant issued, and the State ceded the same tract of country to the United States, by the articles of compact and cession bearing date the — day of —, 1802.

The money deposited by the Virginia Company was withdrawn by J. B. Scott, who was their agent, but who, the memorialist alleges, was not authorized to receive the same. That deposited by the South Carolina Company, is said still to remain in the Treasury of Georgia.

Both companies now contend that they have a claim against the United States for compensation for losses sustained by them, in consequence of the refusal on the part of Georgia to carry what is called their contract into effect, and urge, that if the Constitution of the United States had not been changed in regard to the suability of States, they could have compelled the State of Georgia to a specific execution of their contract. The act of 1789 is called a contract, because the memorialists say their petition to the Legislature, upon which the law is founded, is referred to in the preamble of the act, and thereby becomes a part of it; and they state, that, in this petition, it was proposed to make the payments in that description of paper which was afterwards tendered. The committee have not seen the petition, but they conceive that the idea of the petition being ingrafted into, and thereby becoming a part of the act, is too novel in its nature to require any comment from them to prove its inadmissibility. They do not consider the transaction in the light of a contract, as the companies were not bound by it to a compliance, and might have refused, at any time, to make a payment, without subjecting themselves to any penalty whatever. They view the act as a conditional grant, not of the land itself, but of the pre-emption right; and the title of the companies was to be protected, upon their complying with the condition contained in it. This condition was the payment of a sum of money, and if it had been fulfilled on their part, would have given them a claim upon the honor and justice of the State for a perfect and complete title. To show their compliance with the condition, they offer the evidence of their own petition, referred to in the preamble of the law, the depositions of some of the members of the Legislature, and the protest of the minority who voted against the act, to prove that it was the intention of the Legislature that payment might be made in that description of paper which was tendered.

The preamble of a statute is sometimes referred to, but always with caution, to assist in the interpretation of the enacting clauses, but the preamble of the act in question can throw no light on the

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present subject, as it contains no expression relative to the species of money or paper which was to be received in payment. The testimony of individuals who were members of the Legislature, and the protest of the minority, should be resorted to with still greater caution, as they are mere matters of opinion, and the same, or a greater number of other individuals, who were members of the same body, might have entertained opinions of a directly contrary nature. Indeed, the resolution of June, 1790, passed by the same Legislature who framed the act of 1789, directing the Treasurer to receive in payment from these companies only gold and silver, and the paper medium of the State, is a stronger evidence of its spirit and intention than any which has been offered, and this is in complete hostility to the pretensions of the present claimants. It is believed to be a sound doctrine, that laws should, if possible, be interpreted without calling in the aid of any foreign materials, and that the meaning of the Legislature should be collected from the language which they themselves have used to express it. If there should be an obscurity in one clause, all the others of the same act ought to be carefully examined, and compared with that in which the obscurity exists. If in this manner the meaning of the Legislature can be found, and that case be rendered clear which was obscure before, it is the safest method of interpretation, and is always preferred.

The memorialists appear to rely with much confidence upon one expression contained in the first section of the act of 1789, and this is the only one which favors their construction. They allege that, as the law declares they shall be entitled to a grant upon paying into the Treasury the amount of \$66,000, and \$93,000 respectively, they were at liberty to pay in paper at that time current in Georgia, (except what was called rattlesnake money,) whether bills of credit, certificates, or liquidated claims upon the Treasury. The expression (the *amount* of \$60,000, &c.,) is certainly not a very common one, as here applied, the word *sum* being more generally used in this sense; but it is by no means an inconsistent expression. If the companies were authorized to give it the construction which they contend for, it might, with equal plausibility, be extended to wheat, flour, corn, tobacco, or almost any other article which is a subject of traffic between individuals, or, indeed, to the old Continental currency, and to the bills of credit issued by any other State in the Union. This certainly cannot be permitted, as in such case, the lands might have been paid for in paper not worth more than one dollar in the hundred. If, however, the use of the word *amount*, instead of the word *sum*, in the first section, creates any doubt as to the intention of the Legislature, this doubt will be removed by referring to the fourth section of the same act, which is in the following words, viz: "That the Treasurer of this State shall, on application of any agent of either of the said companies, within the said term of two years, receive the sum or sums of money, which they are hereby respectively directed to

advance, a certificate or certificates of which payments, under the hand of the Treasurer, shall be a sufficient voucher for the Governor to issue the grants to the respective companies aforesaid." In this clause, the intention of the Legislature is clearly and accurately expressed, as they speak of the "sums of money which the companies were, by the act, directed to advance," thereby referring to the \$66,000, and \$93,000 which was to be paid for the land, and rendering it clear beyond a doubt, that money alone was to be received.

The committee have been thus minute in investigating this case, because the memorialists appear to entertain an opinion that if the State of Georgia had been guilty of a breach of faith, the United States were bound, in equity, to make good the damages, they being second purchasers with notice. Without undertaking to decide this question, or to say whether it would be proper to place these companies on the same footing with those who claim under the act of 1795, the committee are decidedly of opinion that the Virginia Yazoo Company, and the South Carolina Yazoo Company have no claim whatever upon the United States.

IMPORTATION OF SLAVES.

[Communicated to the Senate, January 23, 1804.]

To the Senate and House of Representatives of the United States of America, in Congress assembled:

The American Convention for promoting the abolition of slavery, and improving the condition of the African race, beg leave respectfully to propose for your consideration the utility and propriety of passing such laws as shall prohibit the importation of slaves into the Territory of Louisiana, lately ceded to the United States.

Your memorialists feel themselves deeply impressed with this important subject, and they deem it their duty to solicit, most earnestly, your serious attention to the proposition. They believe that wisdom and sound policy are so intimately united by their Eternal Parent, that man cannot separate them with impunity. If wisdom urge the performance of any particular act, if it command the formation and establishment of any specific law, the soundest policy will be evinced by obedience to that injunction.

True virtue, the offspring of wisdom, teaches man to love his fellow-man, and enjoins him to perform all that may be within the compass of his abilities for the general happiness of his species. When national Governments comply with this benevolent and sublime law, they become the providential instruments of national blessings; but when they oppose or disregard its dictates, their constituents must necessarily feel, sooner or later, all the calamities which follow such opposition or neglect.

Our ancestors have, unhappily, entailed on some of our States the evils of slavery; many of our fellow-citizens in those States we believe are mournfully sensible of the magnitude of their

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burden, but they know and feel that man may commit error with more facility than he can eradicate its consequences. Your memorialists entreat you to reflect on, to consider with impartial attention, the dangers and difficulties before you; and beseech you, with deep concern, to preserve the country, whose regulations depend on your wisdom, from similar calamities.

They also respectfully suggest to you, that while the Constitution of the United States declares all men equally entitled to liberty, they cannot conceive our Government as acting consistently with its declarations, if it shall, in any instance, authorize man to enslave unoffending man. In compliance with that distinguished principle of our national Constitution, a former Congress judged it expedient to introduce among its regulations, for the government of the North-western Territory, a provision resembling that which your memorialists now suggest to you.

There is another consideration to which your memorialists feel themselves bound to call your attention. While the Governments of Europe are shaken by civil discord, or surrounded by the incalculable cruelties and horrors of national warfare, a beneficent and overruling Providence has been pleased to preserve for our country the blessings of peace, to grant us new proofs of his goodness, and to place us in a condition of prosperity, unrivalled in the records of history. Does it not become the duty of a nation, so crowned with the blessings of peace, and plenty, and happiness, to manifest its gratitude, to the whole world, by acts of justice and virtue? For the true honor of our country, from benevolence toward the future possessors of our newly acquired soil, your memorialists hope you will hear and grant their request. And with all the respect which is due to the representatives of a free people, they subscribe themselves, cordially, your friends and fellow-citizens.

Signed by order and on behalf of the Convention.

M. FRANKLIN. *Pres't*
OTHNIEL ALSOP, *Sec.*

PHILADELPHIA, Jan. 13, 1804.

REMONSTRANCE OF THE PEOPLE OF LOUISIANA.

[Communicated to the Senate, Dec. 31, 1804.]

We, the subscribers, planters, merchants, and other inhabitants of Louisiana, respectfully approach the Legislature of the United States with a memorial of our rights, a remonstrance against certain laws which contravene them, and a petition for that redress to which the laws of nature, sanctioned by positive stipulation, have entitled us.

Without any agency in the events which have annexed our country to the United States we yet considered them as fortunate, and thought our liberties secured even before we knew the terms of the cession. Persuaded that a free people would acquire territory only to extend the bles-

sings of freedom, that an enlightened nation would never destroy those principles on which its Government was founded, and that their Representatives would disdain to become the instruments of oppression, we calculated with certainty that their first act of sovereignty would be a communication of all the blessings they enjoyed, and were the less anxious to know on what particular terms we were received. It was early understood that we were to be American Citizens; this satisfied our wishes; it implied every thing we could desire, and filled us with that happiness which arises from the anticipated enjoyment of a right long withheld. We knew that it was impossible to be citizens of the United States without enjoying a personal freedom, protection for property, and, above all, the privileges of a free representative Government, and did not, therefore imagine that we could be deprived of these rights even if there should have existed no promise to impart them; yet it was with some satisfaction we found these objects secured to us by the stipulations of treaty, and the faith of Congress pledged for their uninterrupted enjoyment. We expected them from your magnanimity, but were not displeased to see them guaranteed by solemn engagements.

With a firm persuasion that these engagements would be soon fulfilled, we passed under your jurisdiction with a joy bordering on enthusiasm, submitted to the inconveniences of an intermediate dominion without a murmur, and saw the last tie that attached us to our mother country severed with less regret. Even the evils of a military and absolute authority were acquiesced in, because it indicated an eagerness to complete the transfer, and place beyond the reach of accident the union we mutually desired. A single magistrate, vested with civil and military, with executive and judiciary powers, upon whose laws we had no check, over whose acts we had no control, and from whose decrees there is no appeal: the sudden suspension of all those forms to which we had been accustomed; the total want of any permanent system to replace them; the introduction of a new language into the administration of justice; the perplexing necessity of using an interpreter for every communication with the officers placed over us; the involuntary errors, of necessity committed by judges uncertain by what code they are to decide, wavering between the civil and the common law, between the forms of the French, Spanish, and American jurisprudence, and with the best intentions unable to expound laws of which they are ignorant, or to acquire them in a language they do not understand; these were not slight inconveniences, nor was this state of things calculated to give favorable impressions or realize the hopes we entertained; but we submitted with resignation, because we thought it the effect of necessity; we submitted with patience, though its duration was longer than we had been taught to expect; we submitted even with cheerfulness, while we supposed your honorable body was employed in reducing this chaos to order, and calling a system of harmony from the depth of this confused, discordant mass. But we cannot conceal,

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we ought not to dissemble, that the first project presented for the government of this country tended to lessen the enthusiasm which, until that period, had been universal, and to fix our attention on present evils, while it rendered us less sanguine as to the future. Still, however, we wished to persuade ourselves that further inquiry would produce better information; that discussion would establish our rights, and time destroy every prejudice that might oppose them. We could not bring ourselves to believe that we had so far mistaken the stipulations in our favor, or that Congress could so little regard us, and we waited the result with anxiety, which distance only prevented our expressing before the passing of the bill. After a suspense which continued to the last moment of the session, after debates which only tended to show how little our true situation was known, after the rejection of every amendment declaratory of our rights, it at length became a law, and, before this petition can be presented, will take effect in our country.

Disavowing any language but that of respectful remonstrance, disdaining any other but that which befits a manly assertion of our rights, we pray leave to examine the law for erecting Louisiana into two Territories and providing for the temporary government thereof, to compare its provisions with our rights, and its whole scope with the letter and spirit of the treaty which binds us to the United States.

The first section erects the country south of the thirty-third degree into a Territory of the United States, by the name of the Territory of Orleans.

The second gives us a Governor appointed for three years by the President of the United States.

The fourth vests in him and in a council, also chosen by the President, all Legislative power, subject to the revision of Congress, especially guarding against any interference with public property either by taxation or sale.

And the fifth establishes a Judiciary, to consist of a Supreme Court, having exclusive criminal and original jurisdiction without appeal for all causes above the value of one hundred dollars, and such inferior courts as the Legislature of the Territory may establish. The judges of the superior court are appointed by the President, to continue in office four years.

This is the summary of our constitution; this is so far the accomplishment of a treaty engagement to "incorporate us into the Union, and admit us to all the rights, advantages, and immunities of American citizens." And this is the promise performed, which was made by our first magistrate in your name, "that you would receive us as brothers, and hasten to extend to us a participation in those invaluable rights which had formed the basis of your unexampled prosperity."

Ignorant as we have been represented of our natural rights, shall we be called on to show that this Government is inconsistent with every principle of civil liberty?

Uninformed as we are supposed to be of our acquired rights, is it necessary for us to demonstrate that this act does not "incorporate us in the Union,"

that it vests us with none of the "rights," gives us no advantages, and deprives us of all the "immunities" of American citizens.

If this should be required, we think neither task will be difficult.

On the first point we need only appeal to your declaration of independence; to your constitution; to your different State governments; to the writings of your revolutionary patriots and statesmen; to your own professions and public acts; and finally, legislators, to your own hearts, on which the love of civil liberty and its principles are, we trust, too deeply engraved to be ever totally effaced.

A Governor is to be placed over us whom we have not chosen, whom we do not even know, who may be ignorant of our language, uninformed of our institutions, and who may have no connexions with our country, or interest in its welfare.

This Governor is vested with all executive, and almost unlimited legislative power; for the law declares that, by and with the advice and consent of the legislative body, he may change, modify, and repeal the laws," &c. But this advice and consent will no doubt in all cases be easily procured from the majority of a council selected by the President or Governor, and dependent on him for their appointment and continuance in office; or if they should prove refractory, the power of prerogative frees him from any troublesome interference, until a more prudent selection at the end of the year shall give him a council better suited to his views. The true legislative power, then, is vested in the Governor alone, the council operates as a cloak to conceal the extent of his authority, to screen him from the odium of all unpopular acts, to avoid all responsibility, and give us the faint semblance of a representative assembly, with so few of its distinguishing features, that unless the name were inscribed on the picture it would be difficult to discover the object for which it was intended.

Taxation without representation, an obligation to obey laws without any voice in their formation, the undue influence of the executive upon legislative proceedings, and a dependent judiciary, formed, we believe, very prominent articles in the list of grievances complained of by the United States, at the commencement of their glorious contest for freedom; the opposition to them, even by force, was deemed meritorious and patriotic, and the rights on which that opposition was founded were termed fundamental, indefeasible, self-evident, and eternal; they formed, as your country then unanimously asserted, the only rational basis on which Government could rest; they were so plain, it was added, as to be understood by the weakest understanding; not capable of alienation, they might always be reclaimed; unsusceptible of change, they were the same at all times, in all climates, and under all circumstances; and the fairest inheritance for our posterity, they should never, it was firmly asserted, be abandoned but with life.

These were the sentiments of your predecessors; were they wrong? Were the patriots who composed your councils mistaken in their political

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principles? Did the heroes who died in their defence seal a false creed with their blood? No, they were not wrong! The admiration of the world, the respect still paid to the living, the veneration accorded to the memory of the dead, attest the purity of their principles, and prove the truth of those maxims, which rendered their lives a blessing to their country, and their deaths glorious in its defence.

Are truths, then, so well founded, so universally acknowledged, inapplicable only to us? Do political axioms on the Atlantic become problems when transferred to the shores of the Mississippi? or are the unfortunate inhabitants of these regions the only people who are excluded from those equal rights acknowledged in your declaration of independence, repeated in the different State constitutions, and ratified by that of which we claim to be a member? Where, we ask respectfully, where is the circumstance that is to exclude us from a participation in these rights? Is it because we have not heretofore enjoyed them? This, on the contrary, would seem a reason to hasten the communication, to indemnify us by a futurity of freedom, for the years we have been deprived of it, and enable us, experimentally, to compare the blessings of a free Government with the evils of another kind of dominion. But the present situation of affairs forms no pleasing contrast with that which is past; and if we did not count with confidence on a change in the system you have adopted, the prospect before us would not afford matter for consolatory anticipation; for, though a period is fixed for the absolute government placed over us, though a year may terminate the equally objectionable system which succeeds it, yet what is to follow? Liberty? Self-government? Independence? and a participation in the advantages of the Union? If these were offered to us as the reward of a certain term of patience and submission, though we could not acquiesce in the justice of the procedure, we should have some consolation in our misfortunes; but no manifestation of what awaits us at the expiration of the law is yet made.

We may then again become the victims of false information, of hasty remark, or prejudiced opinion; we may then again be told that we are incapable of managing our own concerns, that the period of emancipation is not yet arrived, and that when, in the school of slavery, we have learned how to be free, our rights shall be restored. Upon the topic to which this leads we are reluctant to speak; but misrepresented and insulted, it cannot be deemed improper to show how groundless are the calumnies which represent us as in a state of degradation, unfit to receive the boon of freedom. How far any supposed incapacity to direct the affairs of our own country would release the United States from their obligation to confer upon us the rights of citizenship, or upon what principle they are to become the judges of that capacity, might, we believe, fairly be questioned; for we have surely not become less fit for the task since the signature of the treaty than we were before that period; and that no such incapacity was

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then supposed to exist, is evident from the terms of that instrument, which declares that we are to be admitted as soon as possible, according to the principles of the Constitution. If the United States, then, may postpone the performance of this engagement until, in their opinion, it may be proper to perform it, of what validity is the compact, or can that be called one of which the performance depends only on the will of the contracting party?

But if capacity is to be the criterion, and information the preliminary requisite of our admission, let us respectfully inquire what is the nature of this capacity and information, and, where it will most probably be found. By the distribution of powers between the General and State Governments, the former have the exclusive superintendence of all external relations, and of those internal arrangements, which regard the several States in their national capacity; the residuary powers, retained by the States, are more limited in their operations, and require in their exercise a species of information to be derived only from local sources. The purest principles will be misapplied, the best intentions will be ill directed, the most splendid efforts of genius will prove ineffectual, without an intimate knowledge of the manners, customs, pursuits, and interests of the people, to whom they are applied, or in whose favor they are exerted. Should this reasoning be just, it would appear to follow that local information should be preferred in a State legislator to splendid acquirement, when they cannot be united; and although we give the representatives of the United States all the superiority they claim and justly merit, yet we cannot be accused of presumption, in supposing that we know somewhat more of our own country and its local interests than men who are acquainted with it only from report. It will not, we trust, be answered that the members of the council must be selected from the inhabitants; we have already shown what share this council will probably have in legislation, and the residence of one year is certainly too short to attain information, or secure anything like a permanence of attachment.

If this local knowledge is necessary to legislate wisely, how much more so is it in order to select discreetly those on whom this task must devolve? The President must necessarily depend on the information of his agents here, without any personal knowledge of the men he must choose. How can he detect imposition, or counteract prejudice? How defeat intrigue, or secure himself from the reproach of having confided our interests to men in whom we have no confidence? We might contrast these inconveniences with the evident advantages of a choice made by the people themselves, and the conviction would be irresistible that the latter possess exclusively that species of information, with respect to character, conduct, circumstances, and abilities, which is necessary to a prudent choice of their representatives; but we presume enough has been said to show that among a people not absolutely sunk in ignorance, the kind of knowledge indispensable to good gov-

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ernment, or a selection of rulers, can only be found at home; that the best abilities, and the purest intentions will not replace it abroad, and that without it all legislation is tyrannical and oppressive. Convinced of this truth, we find the advocates for our subjection driven to an argument at which we have before hinted. To deprive us of our right of election, we have been represented as too ignorant to exercise it with wisdom, and too turbulent to enjoy it with safety. Sunk in ignorance, effeminated by luxury, debased by oppression, we were, it was said, incapable of appreciating a free constitution, if it were given, or feeling the deprivation, if it were denied.

The sentiments which were excited by this humiliating picture may be imagined, but cannot be expressed, consistent with the respect we owe to your honorable body. We were willing, however, to ascribe it to the want of correct information; but we could not avoid wondering that it should be so very defective as to have drawn from the names of some districts in our country an argument as to the language spoken in them, which proved fatal to an important amendment to the bill. We could not imagine what had excited the idea of our effeminacy and profusion; and the laborious planter, at his frugal meal, heard with a smile of bitterness and contempt the descriptions published at Washington of his opulence and luxury.

As to the degree of information diffused through the country, we humbly request that some more correct evidence may be produced than the superficial remarks that have been made by travellers or residents, who neither associate with us nor speak our language. Many of us are native citizens of the United States, who have participated in that kind of knowledge which is there spread among the people; the others generally are men who will not suffer by a comparison with the population of any other colony. Some disadvantages as to education in the higher branches of literature have lately attended us, owing to the difficulty of procuring it, but the original settlement of the province was marked by circumstances peculiarly favorable in this respect; it was made at no distant date, at a period when science had attained a great degree of perfection, and from a country in which it flourished; many individuals possessing a property and rank, which suppose a liberal education, were among the first settlers; and perhaps there would be no vanity in asserting, that the first establishment of Louisiana might vie with that of any other in America for the respectability and information of those who compose it. Their descendants now respectfully call for the evidence which proves that they have so far degenerated as to become totally incompetent to the task of legislation.

For our love of order and submission to the laws we can confidently appeal to the whole history of our settlement, and particularly to what has lately passed in those dangerous moments when it was uncertain at what point our political vibrations would stop; when national prejudice, personal interest, factious views, and ambitious

designs, might be supposed to combine for the interruption of our repose; when, in the frequent changes to which we have been subject, the authority of one nation was weakened before the other had established its power. In those moments of crisis and danger, no insurrection disturbed, no riot disgraced us; the voice of sedition was silent; and before a magistrate was appointed, good morals served instead of laws, and a love of order instead of civil power; it is then as unjust to tax us with turbulence as it is degrading to reproach us with ignorance and vice. But let us admit, that by some train of reasoning to which we are strangers, by some incomprehensible fatality, we are cut off from national rights, and form an unfortunate exception to those general principles on which your revolution and Government are founded; that there is no clause for us in the great charter of nature, and that we must look for our freedom to another source; yet we are not without a claim; one arising from solemn stipulation, and, according to our ideas, full, obligatory, and unequivocal.

The third article of the treaty lately concluded at Paris, declares that "the inhabitants of the ceded territory shall be incorporated into the Union of the United States, and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages, and immunities, of citizens of the United States, and in the mean time they shall be protected in the enjoyment of their liberty, property, and the exercise of the religion they profess."

Your honorable body seems to have adopted a construction of this article, which would suspend its performance until some period fixed by the principles of the Constitution, and to have read the article thus: "the inhabitants shall be incorporated into the Union, and admitted to the enjoyment of all the rights, &c., as soon as the principles of the Federal Constitution will permit." We, on the contrary, contend that the words "according to the principles of the Federal Constitution," as they are placed in the sentence, form no limitation, that they were to be conferred, and that the article contemplates no other delay to our reception than will be required to pass the necessary laws and ascertain the representation to which we are entitled.

The inhabitants of the ceded territory are to be "incorporated into the Union of the United States;" these words can in no sense be satisfied by the act in question. A Territory governed in the manner it directs may be a province of the United States, but can by no construction be said to be incorporated into the Union. To be incorporated into the Union must mean to form a part of it; but to every component part of the United States the Constitution has guaranteed a republican form of Government, and this, as we have already shown, has no one principle of republicanism in its composition; it is, therefore, not a compliance with the letter of the treaty, and is totally inconsistent with its spirit, which certainly intends some stipulations in our favor.

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For if Congress may govern us as they please, what necessity was there for this clause, or how are we benefited by its introduction? If any doubt, however, could possibly arise on the first member of the sentence, it must vanish by a consideration of the second, which provides for their admission to the rights, privileges, and immunities, of citizens of the United States. But this Government, as we have shown, is totally incompatible with those rights. Without any vote in the election of our Legislature, without any check upon our Executive, without any one incident of self-government, what valuable "privilege" of citizenship is allowed us, what "right" do we enjoy, of what "immunity" can we boast, except, indeed, the degrading exemption from the cares of legislation, and the burden of public affairs?

Will it be said that though our right be admitted, yet Congress are to determine the period when it shall be conferred? This, we apprehend, would not only be contrary to the words of the treaty, but would be a solecism in itself. The words "according to the principles of the Federal Constitution, to the enjoyment of the rights," &c., certainly mean to such rights as are secured by the principles of the Constitution, or that we are to be admitted to their enjoyment in such manner as the same principles direct; and at any rate, the words "as soon as possible," can never be construed, so as to give a right of deferring it indefinitely. If it may be procrastinated for two years, we see no reason; why it may not be deferred for twenty, or a hundred, or totally omitted. That our verbal construction is the true one will be evident from pursuing the other exposition to its consequences. If the treaty means to say that we shall be admitted as soon as the principles of the Constitution will permit, we must look into that instrument to discover what restrictions oppose its immediate performance. We should naturally expect, if this reasoning be true, to find some period limited before which we could not become members of the Union, some requisites of population or other circumstance to be previously attained or performed; but, on the contrary, the power of admitting new States is vested in Congress, without any restriction whatever that can be applicable to the present case; there is, therefore, nothing that can satisfy these words, if they are construed as a limitation; nothing but the will of Congress is referred to in the Constitution. This Constitution, then, would prove that the United States had stipulated to admit us into the Union as soon as they should think proper; but a treaty implies a compact, and what compact can arise from a stipulation to perform or not perform, as the party shall deem expedient? This would be such a solecism in argument, such a confusion of terms, as must make us doubt the propriety of any construction that leads to them, and we feel ourselves justified in a persuasion, that the treaty intended to incorporate us into the Union so soon as the laws necessary for that purpose could be passed.

We know not with what view the territory north of the thirty-third degree has been severed

from us, and carried with it the distinguishing name which belonged to us, and to which we are attached; the convenience of the inhabitants we humbly apprehend would have been better consulted by preserving the connexion of the whole province until a greater degree of population made a division necessary. If this division should operate so as to prolong our state of political tutelage, on account of any supposed deficiency of numbers, we cannot but consider it as injurious to our rights, and therefore enumerate it among those points of which we have reason to complain.

If there is force in our reclamations on the great question of fundamental rights; if we are entitled to legislate for ourselves as a member of the Union, and to establish the forms on which that legislation shall be conducted, by framing a constitution suited to our own exigencies, then no further observations need be made on other parts of the law, for the right of local legislation implies that of making the alterations we might deem expedient; then our judiciary would become independent, the executive power would be properly circumscribed, and the legislative guarded against encroachment.

There is one subject, however, extremely interesting to us, in which great care has been taken to prevent any interference even by the Governor and Council, selected by the President himself. The African trade is absolutely prohibited, and severe penalties imposed on a traffic free to all the Atlantic States who choose to engage in it, and as far as relates to procuring the subjects of it from other States, permitted even in the Territory of the Mississippi.

It is not our intention to enter into arguments that have become familiar to every reasoner on this question. We only ask the right of deciding it for ourselves, and of being placed in this respect on an equal footing with other States. To the necessity of employing African laborers, which arises from climate, and the species of cultivation pursued in warm latitudes, is added a reason in this country peculiar to itself. The banks raised to restrain the waters of the Mississippi can only be kept in repair by those whose natural constitution and habits of labor enable them to resist the combined effects of a deleterious moisture, and a degree of heat intolerable to whites; this labor is great, it requires many hands, and it is all important to the very existence of our country. If, therefore, this traffic is justifiable anywhere, it is surely in this province, where, unless it is permitted, cultivation must cease, the improvements of a century be destroyed, and the great river resume its empire over our ruined fields and demolished habitations.

Another subject, not indeed growing out of this law, but of great moment to us, is the sudden change of language in all the public offices and administration of justice. The great mass of the inhabitants speak nothing but the French; the late Government was always careful in their selection of officers to find men who possessed our own language, and with whom we could personally communicate; their correspondence with the in-

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terior parts of the province was also carried on chiefly in our own language; their judicial proceedings were indeed in Spanish; but being carried on altogether by writing, translations were easily made; at present, for the slightest communication, an interpreter must be procured; in more important concerns, our interest suffers from not being fully explained; a phrase, a circumstance seemingly of little moment, and which a person uninterested in the affair will not take the trouble to translate, is frequently decisive, and produces the most important effects. That free communication so necessary to give the magistrate a knowledge of the people, and to inspire them with confidence in his administration, is by this means totally cut off, and the introduction of *viva voce* pleadings into the courts of justice subjects the party who can neither understand his counsel, his judge, nor the advocate of his opponent, to embarrassments the most perplexing, and often to injuries the most serious.

We have thus stated the great sources of discontent which have arisen from the measures your honorable body has been pleased to pursue. Did we suppose them the effect of a settled design to oppress; of a determination to disregard our natural and stipulated rights, we are persuaded we should do as much injustice to your views, as the strongest expressions would do to our feelings of indignation and grief; but we will not insult you by a suspicion so injurious to your motives; the want of true information with respect to us, opinions founded on a superficial acquaintance with our country, and prejudiced relations with our habits and manners, on reports the most unfounded, even as to our language, these alone have given rise to the measures of which we complain, and when these impressions shall have been effaced, we have the fullest confidence that their effects will cease, and the language of remonstrance will be changed to that of congratulation and thanks.

Deeply impressed, therefore, with a persuasion that our rights need only be stated to be recognised and allowed; that the highest glory of a free nation is a communication of the blessings of freedom; and that its best reputation is derived from a sacred regard to treaties; we pray you, Representatives of the people, to consult your own fame and our happiness, by a prompt attention to our prayer; we invoke the principles of your Revolution, the sacred, self-evident, and eternal truths on which your Governments are founded; we invoke the solemn stipulations of treaty; we invoke our own professions and the glorious example of your fathers, and we adjure you to listen to the one and to follow the other, by abandoning a plan so contradictory to every thing you have said, and they have taught—so fatal to our happiness, and the reputation of your country. To a generous and free people we ought not to urge any motive of interest, when those of honor and duty are so apparent; but be assured that it is the interest of the United States to cultivate a spirit of conciliation with the inhabitants of the territory they have acquired.

Annexed to your country by the course of political events, it depends upon you to determine whether we shall pay the cold homage of reluctant subjects, or render the free allegiance of citizens attached to your fortunes by choice, bound to you by gratitude for the best of blessings, contributing cheerfully to your advancement to those high destinies to which honor, liberty, and justice, will conduct you, and defending, as we solemnly pledge ourselves to do, at the risk of fortune and life, our common constitution, country, and laws.

We, therefore, respectfully pray that so much of the law above-mentioned, as provides for the temporary government of this country, as divides it into two Territories, and prohibits the importation of slaves, be repealed.

And that prompt and efficacious measures may be taken to incorporate the inhabitants of Louisiana into the Union of the United States, and admit them to all the rights, privileges, and immunities, of the citizens thereof.

And your petitioners, as in duty bound, will ever pray for the happiness and prosperity of the United States.

Conformable to the original deposited in the House of Representatives.

P. SAUVE,
L. DERBIGNY,
DESTREHAN.

The following remonstrance was communicated to the House of Representatives, January 4, 1805:

To the honorable the Senate, and the honorable the House of Representatives of the United States in Congress assembled: The remonstrance and petition of the representatives elected by the freemen of their respective districts in the District of Louisiana, humbly show:

That your petitioners, as well as those whom they represent, were filled with the most lively pleasure at the first rumor of the cession of Louisiana to the United States. When it no longer became us to doubt of the event, and when we were informed that Congress were making laws to organize the newly-acquired territory, we experienced emotions of gratitude, and anticipated for ourselves and our posterity all the blessings which result to the people of the United States from the wisdom and magnanimity of an enlightened and free Government.

While we were indulging these fond expectations, unmixed with distrust or fear, the act of the last session of your honorable Houses, entitled "An act erecting Louisiana into two Territories, and providing for the temporary government thereof," came to our knowledge, and from our eager grasp snatched the anticipated good. The dictates of a foreign Government! an incalculable accession of savage hordes to be vomited on our borders! an entire privation of some of the dearest rights enjoyed by freemen! These are the leading features of that political system which you have devised for us; for those very men, who, in a solemn treaty, you had stipulated

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to call and to treat as fellow-citizens; yet the American colors are hoisted in our garrisons; this far-famed signal of liberty to all, to us alone exhibits a gloomy appearance, and makes us more sensible of the immeasurable interval between us and political happiness. May we not be long doomed, like the prisoners of Venice; to read the word "liberty" on the walls of prisons! We trust to your wisdom and goodness; you are the guardians of our Constitutional rights, and we repose our hopes in you as in the sanctuary of honor.

The right of the people peaceably to assemble and petition the Government for a redress of grievances, is declared and warranted by the first amendment to the Constitution. To this Constitution we appeal; we learned from you to resist, by lawful means, every attempt to encroach on our rights and liberties; the day we became Americans we were told that we were associated to a free people. We cannot suppose that the language of men jealous of their freedom can possibly be unwelcome to your ears.

By the third article of the treaty between the United States and the French Republic, it is agreed "that the inhabitants of the ceded territory shall be incorporated into the Union of the United States, and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States, and in the mean time they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion they profess."

Your petitioners beg leave to represent to your honorable Houses, that, according to the principles contained in the third article of the treaty above quoted, they conceive that had not Congress thought proper to divide Louisiana into two Territories, they should now be entitled by their population to be incorporated into the Union as an independent State.

In the ordinance for the government of the Territory of the United States northwest of the river Ohio, article the fifth, it is ordained, "that whenever any of the States to be formed out of the Northwestern Territory shall have sixty thousand free inhabitants therein, such State shall be admitted by its delegates into the Congress of the United States, on an equal footing with the original States in all respects whatever, and shall be at liberty to form a permanent constitution and State government: *Provided*, That the constitution and government so to be formed shall be republican, and in conformity with the principles contained in these articles; and so far as it can be considered consistent with the general interest of the Confederacy, such admission shall be allowed at an earlier period, and when there may be a less number of free inhabitants in the State than sixty thousand." Your petitioners are informed, moreover, that at the time of the admission of the State of Ohio into the Union, said State, conformable to the last clause of the fifth article of the

ordinance above quoted, did not contain more than from thirty-three to forty thousand free inhabitants; which proportion, if adhered to in our case, as it seems to us it should have been, the United States having bound themselves by the third article of the treaty above quoted to admit us as soon as possible into the Union, would have given us a right to be immediately incorporated into the Union.

We find neither in the Constitution of the United States, nor in the treaty with the French Republic, any provisions by which Congress may have been authorized to make such division.

We find in the treaty nothing but the plain and unequivocal obligation in Congress, to incorporate the ceded territory into the Union, and admit it as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States; but if Congress had a right to divide Louisiana into two Territories last year, they may claim next year the right to divide it into four or eight Territories. Whenever the population of one of those Territories shall amount to very near the population required by the Constitution of the United States, to entitle that Territory to be admitted in the Union as an independent State, Congress may again claim the right to subdivide said Territory. Your petitioners, if the principle should be granted, see no end to the oppression likely to result from such a precedent; and ill-fated Louisiana is condemned to drag along for ages the fetters of an endless territorial infancy, never (to use the expression of one of the most strenuous advocates of American independence,) to be hardened into the bone of manhood.

Under ordinary circumstances, your petitioners would have been disposed to sacrifice some of those rights secured to them by a solemn treaty, to the convenience of the United States; but the provisory laws enacted by Congress for the district of Louisiana seem to us to be characterized by such an unusual spirit of severity as to oblige your petitioners (if those laws should be enforced) to pray for the unconditional fulfilment of those express engagements contained in the treaty of cession, and for those other benefits to which they are entitled as freemen of the United States. But had not your petitioners the unconditional provisions of a treaty to rest their rights upon, still they might have expected a Government founded on more liberal principles from the Representatives of a free people, who, on a great occasion, had previously declared to the world these truths to be self-evident: "That all men are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness. That, to secure these rights, Governments are instituted among men, deriving their just powers from the consent of the governed. That whenever any form of Government becomes destructive of these ends, it is the right of the people to alter or abolish it, and to institute a new Government, laying its foundations on such principles, and organizing its powers in such form, as

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to them shall seem most likely to effect their safety and happiness."

Little as we are acquainted with the United States, we know by heart your declaration of independence; we recollect the noble deeds of the heroes who bled in your glorious Revolution; we are no strangers to the Constitution of the United States, and the bills of right, and constitutions of the several States in the Union; and it was upon those highly respectable and absolutely binding authorities, that we had anticipated the blessings of freedom.

In order to enforce their pretensions, your petitioners are sensible that it becomes incumbent on them to submit to your honorable Houses a comparative view of the constitutions enacted by Congress, at different times, for the different Territories, which were erected previously to the erection of the district of Louisiana; from that statement, extracted from your own records, your honorable Houses cannot help being convinced that the act respecting the district of Louisiana alone, instead of the open, disinterested countenance of a fond adoptive mother exhibited to our sister territories, bears the stern, distrustful look of a severe, imperious master; and if your honorable Houses will be so good as to follow your petitioners through this interesting review, you will be fully satisfied that the humble remonstrances of your petitioners rest on the rock of American liberty and independence.

Although your petitioners lament that the principle should now appear consecrated by practice, that governors and judges should, contrary to every principle of liberty, and to the principles of the Constitution of the United States, which took care to separate them, unite in their hands the three powers, Legislative, Executive, and Judicial, yet your petitioners would have submitted in silence to whatever had been adopted by Congress, and submitted to by the people. But arbitrary measures without a precedent call loudly for the most energetic remonstrances to your honorable Houses.

By the twelfth section of the act erecting Louisiana into two Territories, and providing for the temporary government thereof, "the Executive power, now vested in the Governor of the Indiana Territory, is to extend to and be exercised in Louisiana." Your petitioners beg leave to state that they have read, with the utmost attention, the laws enacted at different times, for the provisory government of the several Territories of the Union; and that far from observing in those laws anything like trusting the Governor of a neighboring State or Territory with the government of a newly-erected Territory, they find, on the contrary, that Congress paid the most scrupulous respect to the interest and feelings of the inhabitants by the wisest precautions, in not only obliging the Governor to reside in the Territory which he governs, but also in obliging him to hold a freehold estate in the same Territory. In the ordinance for the government of the Territory of the United States Northwest of the river Ohio, we find this provision: "Be it ordained by the au-

thority aforesaid, that there shall be appointed from time to time by Congress a Governor, whose commission shall continue in force for the term of three years, unless sooner revoked by Congress; he shall reside in the district, and have a freehold estate therein in one thousand acres of land, while in the exercise of his office."

In the act authorizing the establishment of a government in the Mississippi Territory we find, "and the President of the United States is hereby authorized to establish therein a government in all respects similar to that now exercised in the Territory Northwest of the river Ohio." And in the act to divide the Territory of the United States Northwest of the river Ohio, we find: "Sec. 2. *And be it further enacted*, That there shall be established within the said Territory a government in all respects similar to that provided by the ordinance of Congress, passed on the 13th day of July, 1787, for the government of the Territory of the United States Northwest of the river Ohio."

In the act erecting Louisiana into two Territories, the executive power in the district of Orleans is vested in a Governor, who shall reside in the territory, &c.

Here, then, are the laws of the three Territories, erected previously to the erection of the district of Louisiana, and the laws of the district of Orleans, erected by the very same act. Those laws make it necessary for the Governor, who is liable to be called upon for the discharge of his official duties by every citizen of the Territory to reside in said Territory. The law with respect to three of those Territories does not stop there. Congress were fully sensible that the inhabitants of those Territories would place more confidence in men who, like the inhabitants themselves, should have a direct interest in the welfare of the country, by their own possessions in it; and to the indispensable condition of residence in the Territory, they made it necessary for the Governor, while in the exercise of his office, to have a freehold estate therein in one thousand acres of land.

The extension of the Executive power to the Governor of the Mississippi Territory over the district of Orleans can hardly be adduced as a precedent; for, ever since the extension of his jurisdiction, the Governor of the Mississippi Territory has habitually resided in the district of Orleans, of which he was Governor in fact; whilst the administration of the government of Mississippi Territory was left in the hands of a Secretary. But admitting, for argument's sake, that it might be construed into a precedent, your petitioners beg leave to observe to your honorable Houses that the circumstances of the two Territories cannot be compared. There are hardly two hundred and forty miles from Natchez to Orleans. An easy and speedy communication can be had at all times between the two places, both by land and by water. The laws of both Territories may be very similar in many important respects, by which the property of the inhabitants may be affected. Slavery prevails in both Territories.

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On the contrary, the point of Louisiana nearest to the place where the Governor of the Indiana Territory makes his habitual residence is not less than one hundred and sixty-five miles distant, and there is not a house to be met with on the road; impassable at many seasons of the year, owing to the number of creeks and rivers which sometimes overflow their banks, sometimes are entirely covered with ice; so that we may conclude that, did not justice and sound policy prohibit the alliance in contemplation, nature itself loudly proclaims its impracticability. Your honorable Houses may judge at what an immense distance some parts of Louisiana must be from the Governor, to whom an appeal lies in many cases affecting the property and even the life of individuals.

What would it be, if, arriving at Vincennes in those circumstances, an inhabitant of Louisiana was told of His Excellency's being at Detroit, six hundred miles further? Besides, the laws of both Territories must be very dissimilar in a number of respects. Slavery cannot exist in the Indiana Territory, and slavery prevails in Louisiana; and here your petitioners must beg leave to observe to your honorable Houses that they conceive their property of every description has been warranted to them by the treaty between the United States and the French Republic. Your petitioners are informed that a law respecting slavery has been passed by Congress for the district of Orleans, similar in many respects to the one formerly made for the Mississippi Territory. Is not the silence of Congress with respect to slavery in this district of Louisiana, and the placing of this district under the Governor of a Territory where slavery is proscribed, calculated to alarm the people with respect to that kind of property, and to create the presumption of a disposition in Congress to abolish at a future day slavery altogether in the district of Louisiana?

The same wise precaution which induced Congress to make the residence of the Governor and the holding of property in the Territory where he exercises his office necessary, extends likewise, in the three Territories erected previously to the erection of the district of Louisiana, to the secretary and judges of the said Territories. In the same third section of the ordinance for the government of the Territory of the United States Northwest of the river Ohio, we find, "there shall be appointed, from time to time, by Congress, a Secretary, whose commission shall continue in force for four years, unless sooner revoked; he shall reside in the district, and have a freehold estate therein in five hundred acres of land, while in the exercise of his office," &c.

And again, in the same third section, "there shall also be appointed a court, to consist of three judges, any two of whom to form a court, who shall have a common law jurisdiction, and reside in the district, and have each therein a freehold estate in five hundred acres of land, while in the exercise of their office."

These provisions extend likewise to the Mississippi Territory, as may be seen by a reference

to an act authorizing the establishment of a government in the Mississippi Territory; and to the Indiana Territory, as may be seen by a reference to an act of Congress to divide the territory of the United States Northwest of the Ohio into two separate governments.

Your petitioners cannot consider it as necessary to add any other reasons to those given already, and which appear to them grounded upon justice, in order to determine your honorable Houses immediately to repeal that part of the act providing for the government of the district of Louisiana, which places this district under the administration of the Governor, Secretary, and Judges of the Indiana Territory. To say more on the subject might appear to doubt your disposition to do justice to the request of your petitioners, and to your justice alone they are determined to appeal.

How far the extraordinary measures, contemplated by the fourteenth section of the bill erecting Louisiana into two Territories, may, in the opinion of Congress, have been rendered necessary by circumstances, it does not belong to your petitioners to determine. Were those measures only severe, we should oppose to them only the articles of compact between the original States and the people of the Northwestern Territory. Article second of said compact expressly declares: "That in the just preservation of rights and property it is understood and declared, that no law ought ever to be made, or have force in the said Territory, that shall in any manner whatever interfere with or affect private contracts or engagements, *bona fide* and without fraud, previously formed.

In the fourth article of the same it is provided: "That non-resident proprietors shall in no case be taxed higher than residents."

Here Congress not only acknowledge that they have no right to make a law interfering with or affecting private contracts or engagements, *bona fide* and without fraud, previously formed, but so tender are they of the right of property, that they even go so far as to provide that non-resident proprietors shall in no case be taxed higher than residents.

How different is the condition of the Louisianians! Congress, in the fourteenth section of the act erecting Louisiana into two Territories, seems to acknowledge the validity of some incipient titles to land, for what else can mean these words? "Or to make null and void any *bona fide* act or proceedings to obtain a grant for lands done by an actual settler, agreeably to the laws, usages, and customs of the Spanish Government." Act or proceedings cannot certainly mean anything else than the incipient titles of which we are speaking.

Now, suppose such act or proceeding, agreeably to the laws, usages, and customs of Spain, to have actually taken place, three years were granted by the Spanish Government after having obtained a full or incipient grant for making a settlement thereon. There may be, and there are, American emigrants, who, some time previously to the 20th day of December, 1803, may have bought

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from the original proprietor, or rather holder, of that incipient title, his right to said lands. There may be, and there are, some who have obtained those incipient titles in their own name, and who, ignorant as they must have been of a law not enacted at the time, and taking it for granted that Congress would allow the same space of time which was allowed by the Spanish Government for making a settlement upon lands obtained from the Spanish Government, may have returned to the Eastern part of the United States in order to prepare everything necessary for their removal, and with an intention of coming back to Louisiana in the following spring to settle upon those lands which they had bought *bona fide* and without *fraud*. But perhaps Congress, who, in the beginning of the fourteenth section, had declared null and void every act and proceeding subsequent to the Treaty of St. Ildefonso, made the 1st day of October, 1800, of whatsoever nature, towards the obtaining any grant, title, or claim to such lands, and under whatever authority transacted or pretended, be, and have been, from the beginning, null, void, and of no effect in law or equity, may insist that since the sovereignty of the lands in Louisiana was vested in the United States, the 1st day of October, 1800, and since, more than three years elapsed from the 1st day of October, 1800, to the 20th day of December, 1803, they have unquestionably a right to expel from the lands they claim any man who, according to the conditions of the Spanish Government, has made no improvement on the lands he might have obtained on the 20th day of December, 1793; and as to Congress being pleased to confirm such in itself an insufficient title to any actual settler, it is a favor which they may or may not grant, without binding themselves to extend it to the representative of the original holder, unless the express condition of an improvement has been fulfilled; but if your honorable Houses give leave to your petitioners to remind you that, by the first article of the Treaty of St. Ildefonso, "His Catholic Majesty promises and engages, on his part, to cede to the French Republic, six months after the full and entire execution of the conditions and stipulations herein relative to His Royal Highness the Duke of Parma, the colony or province of Louisiana, with the same extent that it has now in the hands of Spain, and that it had when France possessed it," it will be manifest to your honorable Houses that the King of Spain did not renounce his sovereignty over Louisiana on the 1st day of October, 1800.

At what period of time an absolute renunciation of Louisiana was made by the King of Spain your petitioners cannot ascertain; but they humbly conceive that the sovereignty of the United States in Louisiana did not begin previously to that absolute and unconditional renunciation on the part of the King of Spain.

And if your honorable Houses consider, moreover, that time sufficient must be allowed for the Spanish Government to make known its final treaty with the French Republic to its agents in Louisiana, (authorized, your petitioners humbly

conceive, to grant lands in its name until they received official notice of the treaty which ceded Louisiana to France,) and that it is not probable that a Government at a considerable distance can be in a greater hurry to take steps by which it divests itself of the sovereignty of a country, than the Government which has just acquired that country, and which is on the spot, has taken to have its sovereignty acknowledged there, and that ten months and ten days elapsed after the treaty between the United States and the French Republic before the United States took possession of Louisiana, your honorable Houses must conclude that there may have been grants for lands obtained from the Spanish Government, as to which those who have obtained them may have yet more than one year to comply with the laws, usages, and customs of the Spanish Government. But your petitioners (we mean the few who have any knowledge at all of the law respecting Louisiana, enacted during the last session of your honorable Houses) find themselves placed between the necessity either of not complying with the conditions on which they received lands from the Spanish Government, or of acting in direct contradiction to a law enacted by your honorable Houses; and yet what do those grants amount to which were given since the 1st day of October, 1800? If your honorable Houses will be pleased to call upon officers in Louisiana for a correct statement of the quantity of land given since that epoch by the officers of the Spanish Government, your honorable Houses will be satisfied that there has been but a very inconsiderable quantity of land thus disposed of, and disposed of chiefly in favor of hard laboring men, who, owing to the various rumors which ran all over the country ever since the cession of France was spoken of; the country belonging sometimes to Spain, sometimes to France, sometimes to the United State, sometimes to Spain again; at an immense distance from every source of information, very often not understanding the language of their neighbors; discouraged at first from exhausting their means in making improvements on lands to which they had obtained an incipient title, from what they conceived the precariousness of those titles, likely to result from the interference of such or such a Power to which they were told Louisiana belonged; prevented by your law from complying with the conditions of Spain, when they had it not any longer in their power to doubt that the country was ultimately to remain to the United States, and who, at the very moment their confidence had begun to revive, find themselves, whatever they may do, liable to be punished by a free and enlightened nation for having listened to the dictates of prudence and placed confidence in the United States.

Your petitioners beg leave to observe further, that it was only on the 10th day of March, 1804, that the United States took possession of the district of Louisiana; it should seem of course that the inhabitants of Louisiana could not be bound by any law of the United States, previously, at least, to that epoch: Yet your honorable Houses,

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by a law approved by the President, on the 26th day of March, 1804, deprive of his property, and if he does persist in his claim after the first day of October next, condemn to a fine not exceeding one thousand dollars, and to suffer an imprisonment not exceeding one year, any man who shall have attempted a settlement on lands to which he may not have obtained as yet a complete title, if he has made or attempted a settlement any time posterior to the 20th day of December, 1803, that is, more than three months before the law which condemns him was enacted; and if your honorable Houses reflect that the act erecting Louisiana into two Territories, is only to take place on the first day of October, 1804, it will result that a man may be guilty of doing an act indifferent in itself, in virtue of a law which is to take place more than nine months subsequently according to the law itself, before the provision of that law can be enforced, and that, too, in the very face of the third article of the ninth section of the Constitution of the United States, which declares, "That no bill of attainder, or *ex post facto* law, shall be passed.

The 15th section of the law erecting Louisiana into two Territories authorizes the President of the United States "to stipulate with any Indian tribes, owning lands on the east side of the Mississippi, and residing thereon, for an exchange of lands, the property of the United States, on the west side of the Mississippi, in case the said tribes shall remove and settle thereon."

Had the United States bound themselves to exterminate from the face of the earth every inhabitant of Louisiana, your petitioners do not conceive, that they could have taken a more effectual step towards the fulfilment of the engagement, than the measures contemplated by the fifteenth section of the law, respecting the district of Louisiana. But, by the treaty with the French Republic, the United States have engaged to maintain and protect us in the free enjoyment of our liberty and property. Great God! a colony of Indians to protect us in our liberties and properties! And we hear, at the same time, that troops have been ordered from some parts of this district of Louisiana; and, at this moment, the garrison of New Madrid is reduced (not from death or sickness, from which they have kept entirely free, but in virtue of orders received from the commanding officer at Fort Massac,) to fifteen men. In the meantime, depredations and assassinations by the Indians have already begun: it is not a week since your petitioners received the news, that, within forty miles of this place, the Indians had wantonly assassinated three men. A week before, we heard of another set, on the river St. Francis, who committed against one of our scattered settlers every sort of depredation; killing his cattle of every description, destroying all his property of every kind, stripping him and his family entirely naked, and, after glutting themselves with what provisions they found in the house, throwing all the rest into the fire. What a time have your honorable Houses chosen for the exchange in contemplation! A plan, wearing the

most threatening aspect to our lives and properties—a plan not only alarming in its immediate effects, but pregnant with evils of a most dangerous nature in its remote consequences.

Your petitioners humbly conceive, that the tribes of Indians living in your populous States cannot possibly prove, at any time, dangerous to their white inhabitants, principally dispersed and scattered as they are upon an immense, and, in many parts, very thickly inhabited territory: But your honorable Houses must be sensible that it would be far otherwise with respect to any habitual residence those now scattered Indians could make on the west side of the Mississippi. The Indians will be by the measures contemplated connected together, and our white settlers must, for a very considerable time to come, remain dispersed at an immense distance from each other; an easy and defenceless prey to the bloody rage of the merciless tomahawk. Is this protection? Is this justice? Is this equity? Would your honorable Houses acknowledge in all the Powers of Europe the right to collect in one body all their convicts, amounting in number (if such a number could be found) to twice, or perhaps three times your own population, and to vomit them on your shores? The narrow and limited view of your petitioners does not allow them to see any the least difference between the conduct of the Powers of Europe in that case, and your conduct with respect to us; except that in one case the Powers of Europe are not bound by any treaty to protect you, and the Government of the United States is bound to protect us. Your petitioners might add that convicts might possibly be reclaimed, but experience teaches us that the Indians, when conscious of their strength, the nearer they approach to civilization the more inclined they feel to resume at the first opportunity their naturally cruel and savage disposition.

Your petitioners do not doubt but that some grand political ends were expected to be answered by the provision in the fifteenth section of the bill erecting Louisiana into two Territories, but were those ends as advantageous as in the humble opinion of your petitioners they are disastrous—"Nothing," said Aristides to the Athenians, "could be more advantageous than the proposition of Themistocles, but nothing could be more unjust." Your honorable Houses are well acquainted with the determination of the Athenian people.

Your petitioners have thus gone through the painful, yet they conceive indispensable, task of remonstrating against grievances, in compliance with the duty they owed to their country, to themselves, and to posterity. Your petitioners are sensible that, in the discussion of interests of such magnitude, involving their dearest rights, they may, perhaps, appear to have deviated a little, either in some of the conclusions or expressions, from the respect they never intended to refuse to the highest authority of their country: but let your honorable Houses remember that your petitioners feel themselves injured, deeply injured. Could they tamely submit, could they even represent with more moderation in such a case, you

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yourselves would not consider them worthy to be admitted into a portion of the inheritance of the heroes who fought and bled for the independence of America.

Your petitioners ask, 1st. For the repeal of the act erecting Louisiana into two Territories, and providing for the temporary government thereof.

2dly. That legal steps should be immediately taken for the permanent division of Louisiana.

3dly. That a Governor, secretary and judges, should be appointed by the President, who shall reside in the district of Louisiana, and hold property therein to the same amount as is prescribed by the ordinance respecting the Territory Northwest of the river Ohio.

4thly. That the Governor, secretary and judges, be thus appointed, for the district of Louisiana, should, in preference, be chosen from among those who speak both the English and the French languages.

5thly. That the records of each county, and the proceedings of the courts of justice in the district of Louisiana should be kept, and had in both the English and French languages, as it is the case in a neighboring country, under a monarchical Government, and acquired by conquest.

6thly. That supposing the district of Louisiana to be divided into five counties, ten members, two from each county, shall be elected by the people having a right to vote in each county, according to the rules prescribed by the ordinance respecting the Northwestern Territory every two years, or such another number as Congress may appoint, which said members shall, jointly with the Governor, form the Legislative Council of said district of Louisiana.

7thly. That Congress would acknowledge the principle of our being entitled, in virtue of the treaty, to the free possession of our slaves, and to the right of importing slaves into the district of Louisiana, under such restrictions as to Congress in their wisdom will appear necessary.

8thly. That Congress, taking into consideration the distance at which we live from the seat of the General Government, which does not allow the General Government to be informed with respect to the true interest of this country but through the agents of that same Government, Congress should enact a law authorizing this district of Louisiana to send an agent or delegate to Congress, whose powers, as to speaking and voting in the House, Congress may circumscribe as to them may seem proper.

9thly. That funds should be appropriated for the support, and lands set apart or bought for the building and maintaining of a French and English school in each county, and for the building of a seminary of learning, where not only the French and English languages, but likewise the dead languages, mathematics, mechanics, natural and moral philosophy, and the principles of the Constitution of the United States should be taught. Independent of the obligation of spreading knowledge, upon which alone a free Government can stand in a country till now unacquaint-

ed with your laws and language, a powerful additional interest will result, in the opinion of Congress, from the teaching principally of mathematics and natural philosophy, when your honorable Houses reflect that Louisiana abounds with mines of every description, which can never be worked to any advantage without the powerful engines supplied by these two sciences.

10thly. That every private engagement, conformable to the laws of Spain, entered into during the time Louisiana was ruled by the laws of Spain, shall be maintained.

11thly. That any judgment which was considered as final, according to the Spanish law, shall not be revised by any of the tribunals to be established in Louisiana by the United States.

12thly. That any judgment from which an appeal might be had, according to the Spanish law, to any superior tribunal, may be appealed from to a tribunal of equal dignity within this Territory, or the United States, and that a final judgment be had, conformably to the laws of Louisiana, at the time the suits were brought into court.

And now your petitioners trust their remonstrances and petition to the justice of your honorable Houses, and they do not entertain the least doubt but that a nation, who, in their Declaration of Independence, has proclaimed that the governors were intended for the governed, and not the governed for the governors; a nation who complained so loudly of their right of representation, a right inestimable to them, and formidable to tyrants only, being violated; a nation who presented it to the world, as one of their reasons of separation from England, that the King of England had endeavored to prevent the population of their States; a nation who waged war against her mother country for imposing taxes on them without their consent; a nation who styles the Indians "the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes and conditions," will not be deaf to their just complaints; and, by redressing their grievances, will deserve forever the most unbounded affection of the inhabitants of the district of Louisiana.

Elated with these hopes, your petitioners conceive that they cannot end their present remonstrance and petition in a more suitable manner than by renewing to you the oath they had administered to them on the first day of their meeting together in General Assembly, by the first civil commandant of this district of Louisiana.

And we all swear "to be faithful to the United States, to maintain with all our power the Constitution of the United States, and to obey the laws made and to be made by Congress for the district of Louisiana."

Signed at St. Louis, the twenty-ninth day of September, in the year of our Lord one thousand eight hundred and four, and of the American Independence the twenty-ninth.

[Signed by the Deputies of New Madrid, Cape Girardeau, Ste. Genevieve, St. Louis and its dependencies, St. Charles and its dependencies.]

The District of Columbia.

DISTRICT OF COLUMBIA.

[Communicated to the House, January 22, 1805.]

To the Senate and House of Representatives of the United States: The memorial of delegates appointed by various sections of the District of Columbia respectfully represents—

That their constituents, at the commencement of the present session, with a view to ascertain the general opinion on such objects as might require the interposition of Congress, and which, by being presented in one view, might supersede numerous petitions on subordinate points, so apt to distract the attention, and unnecessarily consume time claimed by national concerns, empowered your memorialists to take into consideration the situation of the District, and submit whatever, in their opinion, its welfare required.

Your memorialists accordingly met at an early period and made considerable progress in the business confided to them, when their deliberations were arrested by the propositions offered for a recession of the District. As soon as a decision was made upon them, your memorialists resumed their sittings, and now embrace the earliest opportunity in their power of inviting the attention of the Legislature to the results of their deliberations. In submitting these they beg leave to state that they have refrained from noticing any objects, an attention to which is not, at the present time, of indispensable importance to the interests of the District.

The object which, from its superior interest, first engaged their attention, is the administration of justice. By a recurrence to the laws of Congress it appears that, in organizing the Judiciary system of the United States, fees were allowed to the officers of the courts established in the respective States equal to those allowed in the supreme courts thereof, with an addition of one third, together with other emoluments. The reason of this liberal allowance was doubtless the high grade of suits generally carried before those tribunals, and the great extent of country they embraced. When Congress assumed jurisdiction over this small territory, the same fees, it is presumed from inadvertence, were allowed to the officers of the circuit court of the District of Columbia, as those allowed in the other circuits. Previous to this time, that portion of the District which at present forms the county of Washington was charged with fees similar to those paid in the county courts of Maryland; and that portion which now forms the county of Alexandria was charged with the same fees as those paid in the county courts of Virginia. By this provision the fees have been increased, in some instances, to double, and, in other instances, to three times the amount paid under the States to which the portions of the District were attached. Local and peculiar circumstances, so far from creating any reason for this augmentation, strongly enforce a diminution. Among these are,

The small size of the District;

Its compact population;

The increased number of suits before the circuit court, from the extension of its cognizance to controversies for sums exceeding twenty dollars, the greatest part of which arise between tradesmen and mechanics in moderate circumstances.

Without going into detail, it may be proper to state, that, when the defendant immediately on being served with writ satisfies the demand against him, the costs are seldom less than ten dollars; that, in the suit where the debt is not contested but which is carried into court solely for delay, the costs amount to thirty-three dollars, even in cases where the debt does not exceed twenty-one dollars. In the case of an appeal from the decision of a magistrate on a demand of thirteen dollars, which was reversed by the court, the costs incurred by the defendant amounted to about one hundred and thirty dollars, nearly one-third of which was in compensation to witnesses.

Your memorialists need scarcely, after the statement of those facts, and the mass of corroborating facts herewith submitted, say, that the existing system presses with a weight upon the district that threatens in a short time to destroy the industry of the honest citizen or drive him from it. In order to remove these evils, your memorialists pray a reduction of the fees of the officers of the circuit court, in the county of Washington, to the rates payable to the officers of the county courts of Montgomery and Prince George's, in the State of Maryland, at the time of the assumption of the jurisdiction by Congress; and of those of the officers of the circuit court in the county of Alexandria to the rates payable to the officers of the county court at Fairfax, in the State of Virginia, at the same period.

It is respectfully submitted whether the impartial administration of justice does not require the repeal of so much of the act of Congress, entitled "An act additional to, and amendatory of, an act concerning the District of Columbia," as repeals the act providing for the compensation of the justices of the peace thereby created; and as directs execution on magistrates' judgments to issue from the clerk's office, and allows him a compensation therefor; and likewise so much thereof as relates to the compensation of jurors in the county of Washington; which repeal, your memorialists have no hesitation in saying, will give general satisfaction to their constituents.

Experience having proved the existence of various defects in the militia system, it is recommended as the means of obviating them, and of rendering the system more acceptable to the inhabitants of the district, that it be so altered as to reduce the number of musters from eight, as now directed to be held, to five; that is, three musters in company, one in battalion, and one in legion; to reduce the number of courts for assessing fines from six, as now directed to be held, to four; that is, two battalion and two legionary courts; to make the persons of delinquents liable to arrest and imprisonment, not exceeding twenty-four hours, for each day's non-attendance, where property is not shown whereon to assess the fines; and to devolve the collection of fines on the marshal of the district as

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practised in the first instance, instead of collectors appointed by military courts, as is now the case.

Your memorialists further request that validity may be given in the District of Columbia to letters testamentary and of administration, granted in any part of the United States, in which the testator or intestate resided at the time of his death; and that owners of slaves residing within the district may be permitted to remove them from time to time from one county thereof to the other, without incurring any penalty or forfeiture.

Inconveniences having arisen from the want of competent authority, to lay out and keep in repair roads within the county of Washington, it is requested that adequate provision be made for this interesting object.

Your memorialists are duly impressed with the lateness of the period of their application, and its possible interference with an attention to objects under the consideration of Congress; but they are likewise impressed with a belief that a sincere disposition exists to promote the general interests of the district, and so far as they can be ascertained, to consult the wishes of its inhabitants; having, however, made no request, not dictated by considerations of great weight, and justified by a regard for the interest of their constituents, they entertain the hope that their representation will obtain the early attention of Congress.

C. CONINGHAM, *President,*
N. KING, *Secretary.*

JANUARY 18, 1805.

The committee appointed on the 19th November, 1804, to whom was referred a resolution directing certain inquiries to be made respecting the administration of law, and the fees allowed to the officers of the district court, offer the following report as the result of their labors:

They have, from Herty's Digest of the Laws of Maryland, ascertained the fees payable to the clerks of the county courts of the State, and reduced them from tobacco to the currency of the United States, (in paper marked A.)

They have, also, from the same source obtained the fees payable to the sheriffs in Maryland, in the money of the United States, (in paper marked B.)

They have, from the law of Congress, chap. 125, sec. 1, passed on the twenty-eighth of February, 1799, made an extract, (C,) of the fees allowed to the marshal; which they have also entered in paper B, for the purpose of making the comparison between them, and the fees received by the sheriffs of Maryland for similar services.

They have, from the same law, ascertained the fees of the clerk of the district court, (in extract D.) These are entered, where for similar services, in the paper A, for the purpose of comparing the compensation of clerk of the district court with the clerks of the county courts of Maryland.

The paper marked E shows the number of suits on the docket, at each court or term since the establishment of the county court for the county of Washington; from this it will appear, that, at the three courts holden in 1801, quarter yearly, there

were 763 appearances, 384 imparlances, 193 trials, 8 appeals, and 71 criminal cases. At the three courts held in 1802, two of which were quarter yearly, and the third six months thereafter, there were 1,119 appearances, 657 imparlances, 746 trials, 23 appeals, and 96 criminal cases. At the two half yearly courts holden in 1803, there were 880 appearances, 723 imparlances, 462 trials, 17 appeals, and 93 criminal cases. That at the July term, in 1804, there were 467 appearances, 316 imparlances, 267 trials, 7 appeals, and 65 criminal cases.

Desirable as it is, your committee cannot obtain "the nature and amount of those suits, with the expenses attending them, and the sums recovered," without paying a large sum in fees to the clerk of the court for searches, &c., or they would willingly have taken on themselves the labor of extracting all the information which the documents would afford. Nor can they, from the same causes, obtain the facts relative to cases of insolvency, and which might throw light upon their causes, and show how far it is through the instrumentality of the judiciary establishment of the District that they occur.

The number of criminal cases which appear on the docket may be averaged at about ninety in each year, but the committee have not been able to ascertain the amount of fines imposed.

The marshal has been obliging enough to furnish the committee with (F) the amount of compensation paid to grand and petit jurors at March term, 1802; it being \$711 75. One of the committee being referred to the marshal's office, from the clerk's, for this information, took the liberty of asking other information at the same time, which it was supposed might be obtained from that source (G.) The application was made to the deputy marshal at the office, as accident, rather than design, had led him there. Although unable to obtain the facts wanted, the committee believe the disposition lay with the marshal and deputy, to furnish any information in their possession; but not having complete returns of fees, judgments, &c. in the office, they could not satisfy the inquiries of the committee.

From a professional gentleman your committee have obtained the following information on the subject of uncontested claims: "That where the defendant is served with a writ, provided he immediately pays the debt, the costs are seldom less than ten dollars." And that the expenses attendant on a suit in the circuit court of the District of Columbia, in Washington county, on a debt of twenty-one dollars, where the defendant does not deny it, but only wishes to obtain time by carrying it into court, as nearly as follows: The plaintiff's costs, seventeen dollars sixteen cents, and the defendant's seven dollars thirty-seven cents, being twenty-four dollars and fifty-three cents incurred to the time of judgment. On execution issuing to the clerk and marshal for issuing, poundage, serving *fiery facias*, swearing appraisers, &c., a further expense of about seven dollars ninety-seven cents will be incurred; making, in all, the sum payable by the defendant to be about fifty-four dollars and

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forty-nine cents, instead of the original debt of twenty-one dollars! (I.)

The committee have not succeeded in their endeavor to ascertain the expense of a suit where an average number of witnesses were summoned, and the proceedings are protracted by appeal, delay, &c., but as an illustration of the effect of these principles, in a case not pursued to the extremity, they refer to the statement H, given by a citizen of Washington, of the expense he was involved in, by defending himself against what he considered as a gross imposition, and where he was supported in the belief by a previous adjudication. A claim of thirteen dollars was tried before a magistrate, and judgment given in favor of the defendant. The plaintiff by appeal carried the cause into court; about four witnesses were examined; the judges determined on the appeal, reversed the decision of a magistrate, and the defendant had to pay about one hundred and thirty dollars.

At the first establishment of the court, the legal appearance fee of an attorney was fixed at ten dollars. This was, however, at one of the succeeding terms reduced to six dollars and sixty-seven cents, at which sum it now stands.

On reviewing the information thus obtained, it has suggested certain observations, which the committee deem it proper to submit to the consideration of the delegation. The sudden transition from the economical county courts of the State of Maryland to a more dignified judiciary system given to the district, however flattering to our vanity, is not calculated to give satisfaction to those whom necessity impels into its vortex, or who take into view our real situation. For notwithstanding the per diem allowance to the marshal, and the clerk of the court, we find their fees vastly more than the State officers received. By a comparison of the fees allowed to our federal officers, with those paid to the officers of the county courts of Maryland, it appears that the clerk of the court receives about two hundred and fifty per cent. advance; and the marshal's fees are nearly double what the sheriff of Maryland used to receive. This great increase of compensation can scarcely have been dictated by considerations of our local situation, for, in a district only ten miles square, and where the population is more collected than usual in counties of a State, it cannot be supposed that additional labor would be imposed on the clerk, or on the marshal in the discharge of his duty; the reason of the case seems to point to a contrary conclusion. The circumstances of this district being established as the seat of the General Government must increase its population by the removal of strangers into it, many of whom will be tradesmen and mechanics, whose small debts will constitute a large proportion of the business of the courts, and on whom this increase of expense in prosecuting their claims must operate with peculiar hardship. If, on the other hand, these fees were given under the expectation, that from the smallness of the counties in the district few suits would be instituted, and that the compensation of the officers ought therefore to be increased to enable them to live, the result seems to show that

expectation was erroneous; as, either from the extension of the jurisdiction to sums of twenty dollars, or the description of the inhabitants, the Washington county docket must afford a reasonable portion of business.

The great labor, and perhaps impossibility of procuring all the facts relative to the expense of prosecuting and the amount recovered, has prevented the committee from obtaining an accurate statement; yet from the docket of the terms which have already passed, they have ventured an estimate of the annual expense to the county of Washington, and the probable amount recovered.

The average number of appearances is nine hundred and eighty-eight in the year; of these suppose eighty-eight are not served, it will leave nine hundred suits on which appearance is entered. And supposing only two attorneys' fees to each suit, although there are frequently four, the amount of attorneys' fees in Washington county will be annually upwards of - \$12,000

The average trial docket is five hundred and twelve, to which suppose two hundred have witnesses summoned, two to each suit, and that they have to attend four days on the average, - - - 2,000

Suppose the clerk's and marshal's fees together, on each suit where the defendant enters an appearance, average five dollars, - - - - - 4,500

The supposed annual expense to the inhabitants of the county, in the prosecution of suits, - - - - - 18,500

The average yearly trial docket being five hundred and twelve, suppose four hundred of these are actions of debt, and will, one with another, be for fifty dollars each. Then the yearly sum recovered in court will be, - - - 20,000

Leaving an excess of the amount over the costs, of - - - - - 1,500

It has often been considered as humane and beneficial, particularly to debtors, that the trials do not take place until the third term after the institution of the suit; and a very large portion of suits are believed to be carried into court for the purpose of obtaining this delay. Instead of that effect in this District, it appears that this delay costs between thirty and forty dollars; in many cases exceeding, and in some equal to, the original claim. That this expense is frequently involuntary on the part of the debtor, and generally renders him the more unable to pay; a circumstance which even the professional gentlemen and officers complain of, and by which they lose a considerable portion of their fees. It appears to your committee, as more correct, as well as more humane, that the debt should be substantiated as soon as possible, and the delay of execution be given afterwards. In this case, the creditor, having evidence of the truth of his claim, can transfer or otherwise dispose of it; while the debtor, knowing the sum he has to pay, for such a length

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of time previous to serving an execution, might make arrangements for its discharge.

From every view your committee have been able to take of the subject referred to them, they are of opinion that the delegation ought to ask of Congress an inferior court for the county of Washington; that this court should be composed of —; that it should have original jurisdiction in all cases between twenty and one hundred dollars; decide on appeals from a single magistrate, and determine on sums under fifty dollars, without appeal; but that an appeal on matters of law should lie to the circuit court for sums of fifty dollars or upwards, and the original jurisdiction of the circuit court, in cases of debt, be limited to one hundred dollars.

DANIEL REINTZEL,
NICHOLAS KING.
BENJAMIN MOORE.

The committee to whom was referred the inquiry into the effects of our system of civil jurisprudence on the county of Washington, beg leave to report on the following subjects referred to them:

1st. The effect and operation of so much of a law of Congress, additional to and amendatory of an act concerning the District of Columbia, as prohibits the taking of fees by justices of the peace, and which authorize the clerk of the county court to issue executions on their judgments, and take fees therefor.

2d. The effect and operation of so much of the same law as compels jurors to serve without compensation.

3d. And, the effect and operation of so much of the law as provides that "no *capias ad satisfaciendum* shall issue on any judgment of a single magistrate, or in any case, where the judgment, exclusive of costs, shall not exceed twenty dollars."

On the first subject your committee have to observe, that the law and practice of the State of Maryland, which authorized the magistrates to receive fees for transacting such business as came before them, was never complained of as a grievance, because the sums allowed to be taken were in themselves reasonable, and a bare compensation for the time necessarily employed. For issuing a summons or warrant, they were entitled to twelve and a half cents; for judgment, twelve and a half cents; execution, twelve and a half cents; administering an oath, six cents; taking bail bonds, twenty-five cents; taking the acknowledgments of deeds, twenty-five cents to each magistrate; summoning a *tenire*, seventy-five cents; valuing an orphan's estate, seventy-five cents; and for several other duties imposed on them, fees equally light.

While these fees, small as they are, were allowed, there was no complaint of a disinclination on the part of the justices to attend to the adjustment of differences arising among our poor but industrious citizens. The fees were received from a principle of justice, and the magistrate was reconciled to them by the consideration, that though an inadequate compensation for his time, they were generally paid by a class of citizens depend-

ing on their labor for support, and less able to pay the whole, than the magistrate to abate part of his reasonable claim. The passage of the law which prohibited the magistrates from taking fees was certainly an evil to the community; its tendency was, to render the magistracy less attentive to their duties, and the adjustment of differences less easy of attainment to the poor; it militated against the generally acknowledged principles of justice, particularly in republics, that services ought not to be claimed where compensation for them is not allowed; and it compelled many of our most useful justices of the peace to resign their commissions. While thus taking away from the magistrates, to whom all the trouble of trying the cases brought before them is given, the small compensation they had, the law directs executions on their judgments to be issued by the clerk of the court, and gives him double the fee which the magistrates were allowed to take.

The second subject of inquiry seems attended with more disadvantages to society than the first: for if there are a few men who can give up a portion of their time, without receiving compensation, to the adjustment of differences between their fellow-citizens, and to whom the honor of the magistracy is desirable, they are still fewer in number who can leave their affairs for whole days without previous notice, and attend at a distance from home, at the most unpleasant seasons of the year, for other people's advantage, without being paid for their attendance. When jurors were summoned for the term and received pay for their services, they made arrangements for the transaction of their business during their absence; those summoned were generally judiciously selected, respectable, and in some measure acquainted with those transactions in society to which their inquiries would be directed. Under the present system how differently are we situated: during the whole court, the citizens best qualified for jurors are obliged to keep out of the sight of the marshal and his deputies during the morning of the day when they ought to be attending to their business, lest they be summoned on the jury for the day: and the marshal is obliged to take those whom chance or design has thrown in his way; and they are sometimes travellers, strangers to our habits, our manners, and our laws; who serving against their will may be more anxious to be discharged than solicitous to do justice.

The inconveniences felt from the operation of that portion of the law which prohibits imprisonment for debts under twenty dollars, arise in a great measure from our peculiar local situation. Subject to an influx of strangers by the buildings going on, and the vessels of the United States discharging their seamen in this city, debts of this description to a very considerable amount are contracted by single men with our citizens: many of these contemplating but a transitory residence, and finding the operation of this law, have the dishonesty to avail themselves of it, although they possess sufficient to discharge their debts; and instances of this kind of robbery, aggravated by insult, are not unfrequent. Enemies as your com-

Marine Hospital Fund.

mittee are to everything tyrannical in the execution of the law, they are induced to believe, that the effect of this indulgence is neither favorable to humanity nor justice; that it is more an introduction to dishonesty than a provision of humanity in favor of the unfortunate; for few indeed have been the instances of committing a father of a family to prison for a small debt. The law, however, now favors the idle vagabond, shakes the confidence which ought to exist among our citizens, and in many instances is supposed to prevent that lenity and indulgence to the unfortunate, and those having families, which they formerly received. When the confidence of the citizen has been several times abused, he will of necessity withdraw it from others, and the innocent will suffer from the injustice of the depraved.

The committee, therefore, recommend the passing of the following resolution, as declaratory of the sense of the delegation on the subject of the foregoing report:

Resolved, That in the opinion of the delegates of the District of Columbia the repeal of so much of the act of Congress, entitled "An act additional to, and amendatory of, An act concerning the District of Columbia, as repeals the law providing for the compensation of justices of the peace thereby created," would be just, proper, and beneficial to the county of Washington; as would, also, the repeal of so much of the fourth section of said act as directs executions on magistrates' warrants to issue from the clerk's office, and allows the clerk a fee therefor.

DANIEL REINTZEL.
NICHOLAS KING.

[The tables, being voluminous, are omitted.]

MARINE HOSPITAL FUND.

[Communicated to the House, March 5, 1804.]

Mr. S. L. MITCHILL, from the Committee on Commerce and Manufactures, to whom was referred the memorial of sundry citizens and mariners of the city of Baltimore, in the State of Maryland, praying for greater facilities to the admission of sick and disabled seamen into the marine hospitals, made the following report:

The memorialists state, as a grievance requiring a remedy, that seamen of the United States, taken sick or becoming disabled after their arrival in port, and before reshipment on another voyage, are refused admittance into the infirmary, and denied the benefit of the mariner's fund, although such applicants may have heretofore paid hospital money conformably to law. The distress experienced by many seamen, by this construction and execution of the laws, is loudly complained of: and the interposition of Congress is solicited to save the wretched from their present distress, and to avert similar calamities for the future. The seriousness of this complaint, proceeding from the suffering seamen of our country, has been contemplated with anxiety and con-

cern by the committee: their helpless and unfriended situation has been beheld not only with pity, but with an active benevolence, which, at the instant it finds that succour is necessary, exerts itself promptly and without hesitation to afford it. The spectacle of these useful citizens, who navigate the ships of our country, on all their voyages, in which national glory and national wealth are concerned, turned out of doors, because they are sick and indigent, is too painful to be beheld without emotion.

The cause of these exhibitions of woe, so unpleasant to the feelings of individuals, and so calculated to affect the public sensibility, is worthy of being investigated; and the committee believe that much of the evil complained of, will be found to proceed from the generalization of the seamen fund by the act of May the 3d, 1802.

A reference to the different statutes passed on this subject, will satisfy the inquirer that this is the case. By the prudent and salutary provision of an act passed July 6th, 1798, it is made the duty of the master or owner of every ship or vessel of the United States, arriving from a foreign port, and before she shall be admitted to entry, to render to the collector a true account of the number of seamen employed on board the vessel since her last entry in any port of the United States, and to pay to the said collector at the rate of twenty cents a month for every seaman so employed. The captain is authorized to deduct this out of the sailors' wages. The like regulation was extended to the crews of vessels enrolled or licensed for the coasting trade.

The money thus paid by the seamen, was directed to be accounted for to the Secretary of the Treasury. And the President of the United States was authorized to provide for the temporary relief of sick and disabled seamen. It was an express condition of this capital, that it should be expended only in the district in which it was collected. And as it was judged that in some districts, a surplus would remain over and above the needful expenditure, it was directed that such surplus should be vested in the national stock, for the purpose of accumulation, and of being enlarged by charitable donations until proper marine hospitals could be procured for the permanent accommodation of sick and disabled seamen; or, what was better, until pensions could be assigned them.

To these excellent regulations, another important one was added by the statute of March 2d, 1799. By one of the sections of this act the Secretary of the Navy was directed to retain in his hands twenty cents a month from the wages of officers, seamen, and marines, in the navy, to be paid into the treasury, and expended for the same purposes as the money paid by the seamen in the merchants' service, whether on foreign voyages or in the coasting trade. But in that very statute an unhappy diversion was made of those funds from their original destination. In some of the districts, it happened that more money was expended than the sum collected within the same amounted to. This became, in those places, a matter of complaint; to

Loss of the Frigate Philadelphia.

remedy it, a great inroad was made. The expenditure, which had heretofore been limited to the collection district, was rendered lawful in any part of the State in which such district was situated, and within any other State next adjoining. There was an exception, however, as to the four New England States. Thus was the surplusage in any one district in a great degree prevented, and the project of accumulating money enough for lasting and well endowed hospitals or pensions, by which the sick, wounded, disabled, or veteran seamen might have been provided for and enabled to enjoy repose, almost altogether frustrated.

But even this encroachment upon the primitive design did not give entire satisfaction; complaints were still made in a few places that the surplus of money was inadequate to the wants of the sick and infirm seamen, and they were so loud and reiterated that, on the 3d of May, 1802, Congress listened to them, and declared by a law, the passing of which is never to be regretted, that the moneys heretofore collected—that is ever since 1798—and unexpended, and all moneys thereafter to be collected, under authority of the before mentioned acts, should constitute one general fund, to be employed as circumstances should require, in every seaport of the *nation*. In consequence of this generalizing scheme, the pleasing surplusage that was accumulating in the ports of New York, Philadelphia, Baltimore, and Boston, was broken down and drawn away, except a reservation of \$15,000 for building an hospital in Massachusetts.

By this stroke all the hopes of permanent provisions for sailors, with impaired limbs and exhausted constitutions, were blasted at once. No prospect remained but that of a temporary supply, furnished monthly, or from hand to mouth, as the tax was paid to the Treasury. The sums saved by the good management and rigid economy of the managers of them in some places, were not now, as before, treasured up for future benefit there; but, serving merely to tempt the cupidity of persons, in other and distant places, they were melted down and absorbed in the general mass.

The diminution of the fund, in certain ports where it used to be most abundant, has led to a more strict scrutiny than has been usually practised heretofore as to the admission of sailors to the benefits of hospitals. In some places doubts have been entertained whether unemployed seamen ought to be allowed a participation of those advantages. In others (or one other) they have been refused unless the sickness or disability shall have accrued while they are in actual service. In consequence of this manner of construing and executing the law, uneasiness is manifesting itself in several of our most frequented and opulent seaports. Before the generalizing law, these expressions of dissatisfaction were few and local; since that event, they are growing more numerous, and even universal.

For an able and perspicuous view of the sums collected for the relief of seamen, and the places at which they have been collected and expended, with a variety of other interesting and instructive particulars, the committee beg leave to refer

to a report of the Secretary of the Treasury, made in obedience to a resolve of this House, on the 21st day of January, and now lying on the table. By this it appears that in some places where money is collected, none is expended.

It is plain to the committee that the seamen of their country ought to be distinguished when in distress from common paupers. It was the intention of the Government to consider them so. They, therefore, while in health and employment, pay something towards their own support when they shall be sick and unable to perform services. The sum collected does not seem sufficient, or why should these unfortunate men be rejected as the memorial states? The committee, while it forbears to make any remarks on the sum of \$33,401 expended at Norfolk, and \$26,964 at Charleston, S. C., requests that gentlemen will take the trouble to examine these swelling items of the account, while they note only \$7,330 are collected at the former of those places, and \$15,843 at the latter.

In order, however, to enlarge the means of relief as to temporary purposes, the following proposition is submitted, to wit:

That an additional sum, of five cents per month, be paid for hospital money, by the seamen and others in the foreign, coasting, and naval service, intended by the act of 16th July 1798, and the act of March 2d, 1799.

And with the desire to provide some fund for the permanent relief of decrepit or superannuated seamen, exhausted in service, though not proper objects of a sick infirmary, it is recommended,

That the 1st section of the act of May 3d, 1802, as far as the same respects the generalization of the seamen's fund, be repealed.

LOSS OF THE FRIGATE PHILADELPHIA.

[Communicated to Congress, March 20, 1804.]
*To the Senate and House of
 Representatives of the United States:*

I communicate to Congress a letter received from Captain Bainbridge, commander of the Philadelphia frigate, informing us of the wreck of that vessel on the coast of Tripoli, and that himself, his officers, and men, had fallen into the hands of the Tripolitans. This accident renders it expedient to increase our force, and enlarge our expenses in the Mediterranean, beyond what the last appropriation for the naval service contemplated. I recommend, therefore, to the consideration of Congress, such an addition to that appropriation, as they may think the exigency requires.

TH. JEFFERSON.

MARCH 20, 1804.

TRIPOLI, Nov. 1, 1803.

SIR: Misfortune necessitates me to make a communication the most distressing of my life, and it is with the deepest regret that I inform you of the loss of the United States' frigate Philadelphia, under my command, by being wrecked on

Loss of the Frigate Philadelphia.

rocks between four and five miles to the eastward of the town of Tripoli. The circumstances relating to this unfortunate event are: At 9 A. M. being about five leagues to the eastward of Tripoli, saw a ship, in shore of us, standing before the wind to the westward; we immediately gave chase; she hoisted Tripolitan colors, and continued her course very near the shore; about eleven o'clock had approached the shore to seven fathoms water; commenced firing at her, which we continued, by running before the wind, until half-past 11; being then in seven fathoms water, and finding our fire ineffectual to prevent her getting into Tripoli, gave up the pursuit, and was bearing off the land, when we ran on the rocks in twelve feet water forward, and seventeen abaft; immediately lowered down a boat from the stern, sounded, and found the greatest depth of water astern; laid all sails aback, loosed top-gallant sails, and set a heavy press of canvass on the ship, blowing fresh, to back her off; cast three anchors away from the bows, started the water in the hold, hove overboard the guns, except some abaft to defend the ship against the gun-boats which were then firing on us; found all this ineffectual; then made the last resort, of lightening her forward, by cutting away the foremast, which carried the main top-gallant with it: but labor and enterprise were in vain, for our fate was direfully fixed. I am fully sensible of the loss that has occurred to our country, and the difficulty which it may further involve her in with this Regency; and feel, beyond description, for the brave unfortunate officers and men under my command, who have done everything in their power, worthy of the character and stations they filled; and, I trust, on investigation of my own conduct, that it will appear to my Government and country consistent to the station in which I had the honor of being placed.

Striking on the rocks was an accident not possible for me to guard against by any intimation of charts, as no such shoals were laid down in any on board, and every careful precaution (by three leads kept heaving) was made use of in approaching the shore, to effect the capture of a Tripolitan cruiser; and, after the ship struck the rocks, all possible measures were taken to get her off, and a firm determination made, not to give her up as long as a possible hope remained, although annoyed by gun-boats, which took their position in such a manner that we could not bring our guns to bear on them, not even after cutting away a part of the stern to effect it.

When my officers and self had not a hope left of its being possible to get her off the rocks, and, having withstood the fire of the gun-boats for four hours, and a reinforcement coming out from Tripoli, without the smallest chance of injuring them in resistance, to save the lives of brave men, left no alternative but the distressing one of hauling our colors down, and submitting to the enemy whom chance had befriended. In such a dilemma, the flag of the United States was struck; however painful it will be to our fellow-citizens to hear the news, they may be assured that we feel in a national loss equally with them. Zeal of

serving our country, in doing our duty, has placed us in that situation which can be better conceived than described, and from which we rely on our country's extricating us.

The gun-boats, in attacking, fired principally at our masts; had they directed the shot at their hull, no doubt but they would have killed many.

The ship was taken possession of a little after sunset; and, in the course of the evening, myself, and all the officers, with part of the crew, were brought on shore, and carried before the Bashaw, who asked several questions. From his palace, the officers were conducted to the house which Mr. Cathcart lived in, where we lodged last night, and this day the Minister has become the guarantee to the Bashaw for us officers, and we have given him our parole of honor.

Enclosed you will receive a list of the officers, and a few of the people to attend them, who are quartered in the American Consular house, and are to be provided for by such ways and means as I can best adopt, which will be on as economical a plan as possible: the remainder of the crew will be supported by the Regency.

We have all lost everything but what was on our backs, and even part of that was taken off; the loss of the officers is considerable, as they were well provided in every necessary for a long station.

Mr. Nissan, the Danish Consul, has been extremely attentive, and kindly offers every service of assistance.

I trust, sir, you will readily conceive the anxiety of mind I must suffer. After the perusal of the enclosed certificate from the officers, on my conduct, should you be pleased to express the opinion of Government, you will much oblige me.

I have the honor to be, &c.

WM. BAINBRIDGE.

HON. ROBERT SMITH,
Sec'y of the Navy, Washington.

P. S. Notwithstanding our parole, we are not permitted to leave the house, or to go to the top of it, and they have closed our view of the sea.

List of officers and men quartered at the American Consular-house at Tripoli.

Wm. Bainbridge, Captain; David Porter, Jacob Jones, Theodore Hunt, and Benjamin Smith, Lieutenants; Wm. S. Osborn, Lieut. of Marines; John Ridgely, Surgeon; Keith Spence, Purser; Wm. Knight, Sailing Master; Jonathan Cowdrey, and Nicholas, Harwood, Surgeon's Mates; George Hodge, Boatwain; Bernard Henry, Daniel T. Paterson, James Gibbon, Benj. F. Reed, William Cutbush, Wallace Wormley, Robert Gamble, Richard B. Jones, James Renshaw, James Biddle, and Simon Smith, Midshipmen; Joseph Douglass, Sailmaker; Richard Stephenson, Gunner; William Godby, Carpenter; William Anderson, Captain's Clerk; Minor Forentan, Master's Mate; James C. Morris, Ship's Steward; Otis Hunt, and David Irvine, Sergeants of Marines; William Leith, Ship's Cook; James Casey, Master-at-Arms; Peter Williams, Corporal; John Baptist,

Destruction of the Philadelphia.

Lewis Hecksener, Frederick Lewis. Chas. Mitchell, Peter Cook, Leonard Foster, William James, William Gardner, and William Kemperfill—43.

43

264 men and boys in the Bashaw's Palace.

307 total of crew.

SIR: We, late officers of the United States frigate Philadelphia, under your command, wishing to express our full approbation of your conduct concerning the unfortunate event of yesterday, do conceive that the charts and soundings justified as near an approach to the shore as we made; and that, after the ship struck, every exertion was made, and every expedient tried, to get her off, and to defend her, which either courage or abilities could have dictated. We wish to add, that, in this instance, as well as every other since we had the honor of being under your command, the officer and seaman have distinguished you. Believe us, sir, that our misfortunes and sorrows are entirely absorbed in our sympathy for you.

We are, sir, with sentiments of the highest and most sincere respect, your friends and fellow-sufferers,

DAVID PORTER, Lieutenant.
J. JONES, Lieutenant.
THEODORE HUNT, Lieutenant.
BEN. SMITH, Lieutenant.
WM. S. OSBORN, Lieut. Marines.
JOHN RIDGELY, Surgeon.
KEITH SPENCE, Purser.
WM. KNIGHT, Sailing Master.
JONA. COWDERY, Surgeon's Mate.
NICH. HARWOOD, do.
BERNARD HENRY, Midshipman.
JAMES GIBBON, do.
BENJAMIN F. REED, do.
WALLACE WORMLEY, do.
ROBERT GAMBLE, do.
JAMES BIDDLE, do.
RD. B. JONES, do.
D. T. PATTERSON, do.
WM. CUTBUSH, do.
SIMON SMITH, do.
JOSEPH DOUGLASS, Sailmaker.
GEORGE HODGE, Boatswain.
RD. STEPHENSON, Gunner.
JAMES RENSHAW, Midshipman.
WM. GODBY, Carpenter.

DESTRUCTION OF THE PHILADELPHIA.

Commodore Preble to the Hon. Robert Smith, Secretary of the Navy.

U. S. SHIP CONSTITUTION,
SYRACUSE HARBOR, Feb. 19, 1804.

SIR: I have the honor to inform you that the United States brig Syren, Lieutenant Commandant Stewart, and ketch Intrepid of four guns, Lieutenant Commandant Decatur, arrived here last evening from a cruise. They left this port the

3d instant, with my orders to proceed to Tripoli and burn the frigate (late the United States frigate) Philadelphia, at anchor in that harbor. I was well informed that her situation was such as to render it impossible to bring her out, and her destruction being absolutely necessary to favor my intended operations against that city, I determined the attempt should be made.

I enclose you copies of my orders on this occasion, which have been executed in the most gallant and officer-like manner by Lieutenant Commandant Decatur, assisted by the brave officers and crew of the little ketch Intrepid under his command. Their conduct in the performance of the dangerous service assigned them cannot be sufficiently estimated; it is beyond all praise. Had Lieutenant Decatur delayed one half hour for the boats of the Syren to have joined him, he would have failed in the main object, as a gale commenced immediately after the frigate was on fire, and it was with difficulty the ketch was got out of the harbor. The Syren, owing to the lightness of the breeze in the evening, was obliged to anchor a considerable distance from the city, which prevented her boats from rendering much assistance, as they might have done had they entered the harbor earlier. Lieutenant Stewart took the best position without the harbor, to cover the retreat of the Intrepid, that the lightness of the wind would admit of. His conduct through the expedition has been judicious and meritorious. But few of the officers of the squadron could be gratified by sharing in the danger and honor of the enterprise. In justice to them, I beg leave to observe that they all offered to volunteer their services on the occasion; and I am confident, whenever an opportunity offers to distinguish themselves, that they will do honor to the service.

I enclose you Lieutenants Commandant Stewart and Decatur's official communication, with the names of the officers on board the ketch.

I have the honor to be, &c.

EDWARD PREBLE.

U. S. BRIG SYREN,
SYRACUSE HARBOR, Feb. 19, 1804.

SIR: I have the honor to enclose for your information the principal occurrences and observations during our late expedition in company with the ketch Intrepid, Lieutenant Commandant Decatur, to effect the destruction of the frigate Philadelphia in the harbor of Tripoli, and on the happy termination of that enterprise I heartily congratulate you. I only have to lament that a junction had not been formed with the Intrepid by the boats of the Syren under the command of Lieutenant Caldwell, as I make no doubt they would have been able to carry and destroy one or both of the cruisers lying near the frigate.

You will observe by my notes that the boats were despatched in due season to meet the Intrepid, agreeably to our arrangement; but circumstances rendering it advisable for Lieutenant Commandant Decatur to enter upon the enterprise much earlier than was intended, the junction

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was consequently defeated until after the ship was on fire and the ketch retreating out of the harbor. I have the honor to be, &c.

CHARLES STEWART.

Commodore EDWARD PREBLE, *Commander of the U. S. Squadron in the Mediterranean.*

ON BOARD THE KETCH INTREPID,
At Sea, February 17, 1804.

SIR: I have the honor to inform you that, in pursuance of your orders of the 1st instant, to proceed with this ketch off the harbor of Tripoli, there to endeavor to effect the destruction of the United States' late frigate Philadelphia, I arrived there in company with the United States brig Syren, Lieutenant Commandant Stewart, on the 7th, but, owing to the badness of the weather, was unable to effect anything until last evening, when we had a light breeze from the N. E. At seven o'clock I entered the harbor with the Intrepid, the Syren having gained her station without the harbor in a situation to support us in our retreat. At half past 9, laid her along side the Philadelphia; boarded; and, after a short contest, carried her. I immediately fired her in the store-rooms, cockpit, and berth-deck, and remained on board until the flames had issued from the spar-deck-hatchways and ports, and before I got from along side the fire had communicated to the rigging and tops. Previous to our boarding, they had got their tompons out and hailed several times, but not a gun was fired.

The noise occasioned by boarding and contending for possession, although no fire-arms were used, gave a general alarm on shore, and on board their cruisers which lay about a cable and a half's length from us, and many large boats filled with men lay around, but from whom we received no annoyance. They commenced a fire on us from all their batteries on shore, but with no other effect than one shot passing through our top-gallant sail.

The frigate was moored within half gun-shot of the Bashaw's castle, and of their principal battery. Two of their cruisers lay within two cable's length on the starboard quarter, and their gun-boats within half gun-shot on the starboard bow. She had all her guns mounted and loaded, which, as they became hot, went off; as she lay with her broadside to the town, I have no doubt but some damage has been done by them. Before I got out of the harbor, her cables had burnt off, and she drifted in under the castle where she was consumed. I can form no judgment as to the number of men that were on board of her—there were about twenty-killed—a large boatful got off, and many leaped into the sea. We have made one prisoner, and I fear from the number of bad wounds he has received, he will not recover, although every assistance and comfort has been given him.

I boarded with sixty men and officers, leaving a guard on board the ketch for her defence; and it is with the greatest pleasure I inform you I had not a man killed in this affair, and but one slightly wounded. Every support that could be given, I

received from my officers, and, as the conduct of each was highly meritorious, I beg leave to enclose you a list of their names. Permit me, also, sir, to speak of the brave fellows I have the honor to command, whose coolness and intrepidity was such as I trust will ever characterize the American tars.

It would be injustice in me, were I to pass over the important services rendered by Mr. Salvador, the pilot, on whose good conduct the success of the enterprise in the greatest degree depended. He gave me entire satisfaction.

I have the honor to be, &c.

STEPHEN DECATUR, JR.

Commodore EDWARD PREBLE, &c.

The following is a list of the officers employed on board the ketch Intrepid, under my command, in boarding and destroying the frigate Philadelphia, in the harbor of Tripoli, on the 16th instant:

Lieutenants—James Lawrence, Joseph Bainbridge, and Jonathan Thorn.

Surgeon—Lewis Herman.

Midshipmen—Ralph Izard, John Rowe, Charles Morris, Alexander Laws, John Davis, of the Constitution; Thomas McDonough, of the Enterprise; and Thomas Oakley Anderson, of the Syren.

Mr. Salvador, pilot, and sixty-two men.

NAVAL OPERATIONS AGAINST TRIPOLI.

[Communicated to Congress, Feb. 20, 1805.]

*To the Senate and House of
Representatives of the United States:*

I communicate, for the information of Congress, a letter of September 18, from Commodore Preble, giving a detailed account of the transactions of the vessels under his command, from July the 9th, to the 10th of September last past.

The energy and judgment displayed by this excellent officer, through the whole course of the service lately confided to him, and the zeal and bravery of his officers and men in the several enterprises executed by them, cannot fail to give high satisfaction to Congress and their country, of whom they have deserved well.

TH. JEFFERSON.

FEBRUARY 20, 1805.

Copy of a letter from Commodore Preble to the Secretary of the Navy.

U. S. SHIP CONSTITUTION,
Malta Harbor, Sept. 18, 1804.

SIR: I had the honor to write you from Messina, under date of the 5th of July; I then expected to have sailed the day following, but was detained, by bad weather, until the 9th, when I left it, with two small bomb vessels under convoy, and arrived at Syracuse, where we were necessarily detained four days. On the 14th I sailed, the schooners Nautilus and Enterprise in company with six gun-boats and two bomb vessels, generously loaned us by his Sicilian Majesty. The

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bomb vessels are about thirty tons, carry a thirteen-inch brass sea-mortar and forty men. Gun-boats, twenty-five tons, carry a long iron twenty-four pounder in the bow, with a complement of thirty-five men. They are officered and manned from the squadron, excepting twelve Neapolitan bombardiers, gunners, and sailors, attached to each boat, who were shipped by permission of their Government. This step I found necessary, as every vessel in the squadron was considerably short of complement. The gun-boats are constructed for the defence of harbors; they are flat bottomed and heavy, and do not sail or row even tolerably well. They were never intended to go to sea, and I find cannot be navigated with safety, unless assisted by tow ropes from larger and better sailing vessels, nor even then, in very bad weather. However, as they were the best I could obtain, I have thought it for the good of our service to employ them, particularly as the weather in July and August is generally pleasant, and, without them, my force too small to make any impression on Tripoli. On the 16th of July we arrived at Malta, where we were detained, by contrary gales, until the 21st, when we left it, and arrived in sight of Tripoli the 25th, and were joined by the Syren, Argus, Vixen, and Scourge. Our squadron now consisted of the Constitution, three brigs, three schooners, two bombs, and six gun-boats, our whole number of men, one thousand and sixty. I proceeded to make the necessary arrangements for an attack on Tripoli, a city well walled, protected by batteries judiciously constructed, mounting one hundred and fifteen pieces of heavy cannon, and defended by twenty-five thousand Arabs and Turks; the harbor protected by nineteen gunboats, two galleys, two schooners of eight guns each, and a brig mounting ten guns, ranged in order of battle, forming a strong line of defence, at secure moorings, inside a long range of rocks and shoals, extending more than two miles to the eastward of the town, which form the harbor, protects them from the northern gales, and renders it impossible for a vessel of the Constitution's draught of water to approach near enough to destroy them, as they are sheltered by the rocks, and can retire under that shelter to the shore, unless they choose to expose themselves in the different channels and openings of the reefs, for the purpose of annoying their enemies. Each of their gun-boats mounts a heavy eighteen or twenty-six pounder in the bow, and two brass howitzers on their quarters, and carry from thirty-six to fifty men. The galleys have each one hundred men; schooners and brigs about the same number. The weather was not favorable for anchoring until the 28th, when, with the wind E. S. E. the squadron stood in for the coast, and, at 3 P. M. anchored, per signal, Tripoli bearing S. two and a half miles distant. At this moment the wind shifted suddenly from E. S. E. to N. N. W., and thence to N. N. E. At 5 o'clock it blew strong, with a heavy sea, setting directly on shore. I made the signal to prepare to weigh. At 6, the wind and sea having considerably increased, the signal was made for the squadron to

weigh and gain an offing: the wind continued veering to the eastward, which favored our gaining sea-room, without being obliged to carry so great a press of sail as to lose any of our gun-boats, although they were in great danger. The gale continued varying from northeast to south south east, without increasing much until the 31st July, when it blew away our reefed foresail, and close reefed maintopsail; fortunately the sea did not rise in proportion to the strength of the gale, or we must have lost all our boats. August 1st the gale subsided, and we stood towards the coast: every preparation was made for an attack on the town and harbor. August 3d, pleasant weather, wind from the East; stood in with the squadron towards Tripoli. At noon we were between two and three miles from the batteries, which were all manned, and observing several of their gun-boats and galleys had advanced, in two divisions, without the rocks, I determined to take advantage of their temerity. At half past 12, I wore off shore, and made the signal to come within hail, when I communicated to each of the commanders my intention of attacking the enemy's shipping and batteries. The gun and mortar boats were immediately manned, and prepared to cast off, the gun-boats in two divisions of three each; the first division commanded by Captain Somers, in No. 1. Lieutenant Decatur, in No. 2, and Lieutenant Blake, in No. 3; the second division commanded by Captain Decatur, in No. 4, Lieutenant Bainbridge, in No. 5, and Lieutenant Trippe, in No. 6. The two bombards were commanded by Lieutenant Commandant Dent, and Mr. Robinson, first lieutenant of this ship. At half past 1 o'clock, having made the necessary arrangements for the attack, wore ship and stood towards the batteries. At 2, signal made to cast off the boats; at a quarter past 2, signal for bombs and gun-boats to advance and attack the enemy. At half past 3, general signal for battle. At three-quarters past 2, the bombs commenced the action by throwing shells into the town. In an instant the enemy's shipping and batteries opened a tremendous fire, which was promptly returned by the whole squadron within grape-shot distance; at the same time the second division, of three gun-boats, led by the gallant Captain Decatur, was advancing, with sails and oars, to board the eastern division of the enemy, consisting of nine boats. Our boats gave the enemy showers of grape and musket balls as they advanced; they, however, soon closed, when the pistol, sabre, pike, and tomahawk, were made good use of by our brave tars. Captain Somers being in a dull sailer, made the best use of his sweeps, but was not able to fetch far enough to the windward to engage the same division of the enemy's boats which Captain Decatur fell in with; he, however, gallantly bore down with his single boat on five of the enemy's western division, and engaged within pistol shot, defeated, and drove them within the rocks in a shattered condition, and with the loss of a great number of men. Lieutenant Decatur, in No. 2, was closely engaged with one of the enemy's largest boats of the eastern division

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which stuck to him, after having lost a large proportion of men, and, at the instant that brave officer was boarding her to take possession, he was treacherously shot through the head by the captain of the boat that had surrendered, which base conduct enabled the poltroon (with the assistance he received from other boats) to escape. The third boat of Captain Somers' division kept to windward, firing at the boats and shipping in the harbor. Had she gone down to his assistance, it is probable several of the enemy's boats would have been captured in that quarter. Captain Decatur, in No. 4, after having, with distinguished bravery, boarded and carried one of the enemy of superior force, took his prize in tow, and gallantly bore down to engage a second, which, after a severe and bloody conflict, he also took possession of. These two prizes had thirty-three officers and men killed, and twenty-seven made prisoners, nineteen of which were badly wounded. Lieutenant Trippe, of the Vixen, in No. 6, ran alongside of one of the enemy's large boats, which he boarded with only Midshipman John Henley and nine men, his boat falling off before any more could get on board; thus was he left, compelled to conquer or perish, with the odds of thirty-six to eleven. The Turks could not withstand the ardor of this brave officer and his assistants; in a few minutes the decks were cleared, and her colors hauled down. On board of this boat fourteen of the enemy were killed, and twenty-two made prisoners, seven of which were badly wounded. The rest of their boats retreated within the rocks. Lieutenant Trippe received eleven sabre wounds, some of which are very severe. He speaks in the highest terms of Mr. Henley, and those who followed him. Lieutenant Bainbridge, in No. 5, had his latteen yard shot away early in the action, which prevented his getting alongside the enemy's boats, but he galled them by a steady and well-directed fire with musket shot; indeed, he pursued the enemy until his boat grounded under the batteries; she was, fortunately, soon got off. The bomb vessels kept their stations, although covered with the spray of the sea occasioned by the enemy's shot. They were well conducted by Lieutenants Dent and Robinson, who kept up a constant fire from the mortars, and threw a great number of shells into the town. Five of the enemy's gun-boats and two galleys, composing the centre division, and stationed within the rocks as a reserve, joined by the boats that had been driven in, and supplied by fresh men from the shore to replace those they had lost, twice attempted to row out, to endeavor to surround our gun-boats and their prizes. I as often made the signal to cover them, which was promptly attended to by the brigs and schooners, all of which were gallantly conducted, and annoyed the enemy exceedingly, but the fire from this ship kept their flotilla completely in check. Our grape shot made great havoc among their men, not only on board their shipping, but on shore. We were several times within two cables length of the rocks, and within three of their batteries, every one of which, in succession, were silenced, so long as we could

bring our broadside to bear upon them; but the moment we passed a battery, it was reanimated, and a constant, heavy fire, kept up from all that we could not point our guns at. We suffered most when wearing or tacking; it was then I most sensibly felt the want of another frigate. At half past 4, the wind inclining to the northward, I made the signal for the bombs and gun-boats to retire from action, and, immediately after, the signal to tow off the gun-boats and prizes, which was handsomely executed by the brigs, schooners, and boats of the squadron, covered by a heavy fire from the Constitution. At three-quarters past 4, P. M., the light vessels, gun-boats, and prizes, being out of reach of the enemy's shot, I hauled off to take the bomb vessels in tow. We were two hours under the fire of the enemy's batteries, and the only damage received in the ship is, a twenty-four pound shot nearly through the centre of the mainmast, thirty feet from the deck; main royal yard and sail shot away; one of our quarter-deck guns damaged by a thirty-two pound shot, which, at the same time, shattered a marine's arm; two lower shrouds and two backstays were shot away, and our sails and running rigging considerably cut. We must impute our getting off thus well to our keeping so near that they over-shot us, and to the annoyance our grape shot gave them; they are, however, but wretched gunners. Gunboat No. 5 had her main yard shot away, and the rigging and sails of the brigs and schooners were considerably cut. Lieutenant Decatur was the only officer killed, but in him the service has lost a valuable officer. He was a young man who gave strong promise of being an ornament to his profession. His conduct in the action was highly honorable, and he died nobly. The enemy must have suffered very much in their killed and wounded, both among their shipping and on shore. Three of their gun-boats were sunk in the harbor, several of them had their decks nearly cleared of men by our shot, and a number of shells burst in the town and batteries, which must have done great execution. The officers, seamen, and marines, of the squadron behaved in the most gallant manner. The Neapolitans, in emulating the ardor of our seamen, answered my highest expectations.

I cannot but notice the active exertions and officer-like conduct of Lieutenant Gordon, and the other lieutenants of the Constitution. Mr. Harriden, the master, gave me full satisfaction, as did all the officers and ship's company. I was much gratified with the conduct of Captain Hall and Lieutenant Greenleaf, and the marines belonging to his company, in the management of six long twenty-six pounders, on the spar deck, which I placed under his direction. Captain Decatur speaks in the highest terms of the conduct of Lieutenant Thorn and Midshipman McDonough, of No. 4, as does Captain Somers of Midshipmen Ridgely and Miller, attached to No. 1.

Annexed is a list of killed and wounded; and, enclosed, a copy of my general orders on this occasion.

Killed.—Gun-boat No. 2, Lieut. James Decatur.

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Wounded.—Constitution, one marine; gun-boat No. 4, Captain Decatur, (slight,) one sergeant of marines, and two seamen; gun-boat No. 6, Lieut. Trippe, severely, one boatswain's mate, and two marines; gun-boat No. 1, two seamen; gun-boat No. 2, two seamen. Total—one killed and thirteen wounded.

August 5th.—We were at anchor with the squadron about two leagues north from the city of Tripoli; the Argus in chase of a small vessel to the westward, which she soon came up with, and brought within hail. She proved to be a French privateer, of four guns, which put into Tripoli a few days since, for water, and left it this morning. I prevailed on the Captain, for a consideration, to return to Tripoli, for the purpose of landing fourteen very badly wounded Tripolitans, which I put on board his vessel, with a letter to the Prime Minister, leaving it at the option of the Bashaw to reciprocate this generous mode of conducting the war. The sending these unfortunate men on shore, to be taken care of by their friends, was an act of humanity on our part, which I hope will make a proper impression on the minds of the barbarians, but I doubt it. All hands were busily employed in altering the rig of the three prizes, from latteen vessels to sloops, and preparing for a second attack. Observed one of the enemy's schooners and the brig, (two corsairs in the harbor) to be dismasted. Was informed by the French captain, that the damage these vessels received in the action of the third had occasioned their masts being taken out.

August 7th.—The French privateer came out, and brought me a letter from the French Consul, in which he observes, that our attack of the third instant has disposed the Bashaw to accept of reasonable terms, and invited me to send a boat to the rocks with a flag of truce, which was declined, as the white flag was not hoisted at the Bashaw's castle. At nine A. M., with a very light breeze from the eastward, and a strong current which obliged the Constitution to remain at anchor, I made the signal for the light vessels to weigh, and the gun and bomb boats to cast off, and stand in shore towards the western batteries; the prize boats having been completely fitted for service, and the command of them given to Lieutenants Crane, of the Vixen, Thorn, of the Enterprise, and Caldwell, of the Syren, the whole advanced with sails and oars. The orders were for the bombs to take a position in a small bay to the westward of the city, where but few of the enemy's guns could be brought to bear on them, but from whence they could annoy the town with shells; the gun-boats to silence a battery of seven heavy guns which guarded the approach to that position, and the brigs and schooners to support them, in case the enemy's flotilla should come out. At half-past one P. M., a breeze from N. N. E., I weighed with the Constitution and stood in for the town, but the wind being on shore, made it imprudent to engage the batteries with the ship, as, in case of a mast being shot away, the loss of the vessel would probably ensue, unless a change of wind should favor our getting off. At half-

past two P. M., the bomb and gun-boats having gained their station, the signal was made for them to attack the town and batteries, within point blank shot, which was warmly returned by the enemy. The seven gun battery, in less than two hours was silenced, except one gun; I presume the others were dismounted by our shot, as the walls were almost totally destroyed. At a quarter-past three P. M. a ship hove in sight to the northward, standing for the town; made the Argus signal to chase. At half-past three one of our prize gun-boats was blown up by a hot shot from the enemy, which passed through the magazine: she had on board twenty-eight officers, seamen, and marines, ten of whom were killed, and six wounded; among the killed were, James R. Caldwell, First Lieutenant of the Syren, and Midshipman John S. Dorsey, both excellent officers; Midshipman Spence, and eleven men, were taken up unhurt. Captain Decatur, whose division this boat belonged to, and who was near her at the time she blew up, reports to me, that Mr. Spence was superintending the loading of the gun at that moment, and, notwithstanding the boat was sinking, he, and the brave fellows surviving, finished charging, gave three cheers as the boat went from under them, and swam to the nearest boats, where they assisted during the remainder of the action. The enemy's gunboats and galleys (fifteen in number) were all in motion close under the batteries, and appeared to meditate an attack on our boats; the Constitution, Nautilus, and Enterprise, were to windward, ready, at every hazard, to cut them off from the harbor, if they should venture down; while the Syren and Vixen were near our boats, to support and cover any of them that might be disabled. The enemy thought it most prudent, however, to retire to their snug retreat behind the rocks, after firing a few shot. Our boats, in two divisions, under Captains Somers and Decatur, were well conducted, as were our bomb vessels, by Lieutenants Dent and Robinson. The town must have suffered much from this attack, and their batteries, particularly the seven-gun battery, must have lost many men. At half-past five, P. M., the wind began to freshen from the N. N. E.; I made the signal for the gun and bomb boats to retire from action, and for the vessels to which they were attached to take them in tow. The Argus made signal that the strange sail was a friend.

In this day's action, No. 4 had a twenty-four pound shot through her hull; No. 6, her latteen yards shot away; No. 8, a twenty-four pound shot through her hull, which killed two men; some of the other boats had their rigging and sails considerably cut. We threw forty-eight shells, and about five hundred twenty-four pound shot into the town and batteries. All the officers and men engaged in the action behaved with the utmost intrepidity. At half-past six, all the boats were in tow, and the squadron standing to the north-west. At eight, the John Adams, Captain Chauncey, from the United States, joined company. At nine, the squadron anchored, Tripoli bearing south-east, five miles distant. Gun-boat No. 3 was this

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day commanded by Mr. Brooks, master of the *Argus*, and No. 6 by Lieutenant Wadsworth, of the *Constitution*.

Annexed is a return of our loss in this attack.

Killed. Gun-boat No 9—One lieutenant, one midshipman, one boatswain's mate, one quarter gunner, one sergeant of marines, and five seamen.

Killed. Gun-boat No. 8—Two seamen.

Wounded. No. 9—Six seamen, two of whom mortally. *Total*—Twelve killed, six wounded.

Captain Chauncey brought the first positive information that any reinforcement was to be expected. I was honored with your letters of the 7th, 22d, and 31st of May, informing me that four frigates were coming out, under Commodore Barron, who is to supersede me in the command of our naval forces in these seas, at the same time approving my conduct, and conveying to me the thanks of the President for my services. I beg you sir, to accept my warmest thanks for the very obliging language in which you have made these communications, and to assure the President that to merit the applause of my country is my only aim, and, to receive it, the highest gratification it can bestow.

Captain Chauncey informed me that the frigates might be expected every moment, as they were to sail from Hampton Roads four days after him. In consequence of this information, (and as I could not bring the *John Adams* into action, she having left all her gun carriages for her gun deck, except eight, on board the *Congress* and *Constellation*, a day or two previous to her sailing,) I determined to wait a few days for the arrival of Commodore Barron, before another attack, when, if he should arrive, the fate of Tripoli must be decided in a few hours, and the Bashaw completely humbled. Had the *John Adams* brought out her gun carriages, I should not have waited a moment, and can have no doubt but the next attack would make the arrival of more ships unnecessary for the termination of the Tripoline war. I gave Captain Chauncey orders to remain on the station, that we might be benefitted by the assistance of his boats and men, as nearly half the crews of the *Constitution*, brigs, and schooners, were taken out to man the bombs, gun, and ship's boats, when prepared for an attack.

August the 9th, we were engaged supplying the bombs and gun-boats with ammunition and stores, and getting everything in readiness for an attack the moment Commodore Barron should arrive and make the signal. I cannot but regret that our Naval Establishment is so limited as to deprive me of the means and glory of completely subduing the haughty tyrant of Tripoli, while in the chief command; it will however afford me satisfaction to give my successor all the assistance in my power. At three P. M., I went on board the *Argus* for the purpose of reconnoitering the harbor of Tripoli; we stood in towards the town, and were near being sunk by the enemy's fire. One of their heaviest shot, which struck about three feet short of the water-line, raked the copper off her bottom under water, and cut the plank half through. In the evening the wind blew from the

N. N. E., the squadron weighed and kept under sail all night. The day following we anchored, Tripoli bearing S. S. W., six miles distant. At ten A. M., the French Consul hoisted a white flag at his flag-staff under the national colors, which was a signal that the Bashaw was ready to treat. I sent a boat into the harbor and took this opportunity to forward Captain Bainbridge and his officers letters from their friends: the boat was not allowed to land, but returned in the afternoon and brought me a letter, advising that the Bashaw was ready to receive five hundred dollars for the ransom of each of the prisoners, and terminate the war without any consideration for peace or tribute; this is three hundred and fifty thousand dollars less than was demanded previous to the action of the third instant. These terms I did not hesitate to reject, as I was informed by Captain Chauncey that it was the expectation of our Government, on the arrival of four frigates, to obtain the release of the officers and crew of the *Philadelphia* without ransom, and dictate the terms of peace. I enclose you copies of our correspondence, which will convince you that our attacks have not been made without effect.

16th. No news of the frigates, and but short allowance in the squadron. I sent the *Enterprise* to Malta, with orders to the agent there, to hire transports and send off immediately a supply of fresh water, provision, and other stores, which have become necessary, as some of the squadron have now been five months in sight of this dismal coast, without once visiting a friendly port; those vessels, as well as the gun-boats, receive their supply of water and provisions from the *Constitution*.

18th. As the season is fast approaching when we may expect bad weather, and no news of the frigates, I have determined to make an attack as soon as the wind proves favorable. At eight P. M., I sent Captains Decatur and Chauncey in two small boats to reconnoitre the harbor, and observe the disposition of the enemy's flotilla at night; they returned at midnight, and reported that they were anchored in a line abreast, from the Mole to the Bashaw's castle, with their heads to the eastward, for the defence of the inner harbor. At day-light the wind shifted suddenly from N. E. to N. N. W., and brought a heavy sea on shore, which obliged us, for the greater safety, to weigh and stand to sea.

20th. We had gained an offing of nine or ten leagues—still blowing hard. We met with the ketch *Intrepid*, from Syracuse, with a cargo of fresh water, stock, and vegetables, for the squadron.

22d. Fell in with a ship from Malta, with water and live stock for the squadron. These cargoes arrived very opportunely, as we have for some time past been on short allowance of water. The wind having moderated, we stood in, and anchored with the squadron six miles N. E. by N., from Tripoli; all the boats were engaged in discharging the transports. The *Enterprise* arrived from Malta, but brought no intelligence of the long-expected frigates.

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24th. With a light breeze from the N. E., we stood in, with the squadron prepared for action, intending to attack the town and shipping in the night. At eight in the evening, anchored about two miles and a half from the batteries. At midnight it fell calm. I sent the bomb vessels under the protection of the gun-boats, to bombard the town; the boats of the squadron were employed in towing them in. At two A. M., the bombardment commenced, and continued until day-light, but with what effect is uncertain. At six, all the boats joined us, and were taken in tow by the squadron, which was under weigh, and standing off. At seven, anchored four miles north of the town. The weather, for several days, proved unfavorable for approaching the shore.

28th. We were favored with a pleasant breeze from the eastward. At 3 P. M. we weighed, and stood in for Tripoli. At 5, anchored the Constitution two miles N. by E. from Fort English, and two-and-a-half from the Bashaw's castle; the light vessels ordered to keep under weigh. We were employed until 8 P. M. in making arrangements for attacking the town; a number of the officers, and many of the seamen in the Constitution being attached to the bomb, gun, and ship's boats; Captain Chauncey, with several of his officers, and about seventy seamen and marines, volunteered their services on board the Constitution. All the boats in the squadron were officered and manned, and attached to the several gun-boats; the two bomb vessels could not be brought into action, as one was leaky, and the mortar-bed of the other had given way. The John Adams, Scourge, transports, and bombs, were anchored seven miles to the northward of the town. Lieut. Commandant Dent, of the Scourge, came on board the Constitution, and took charge on the gun-deck; Lieut. Izard, of the Scourge, also joined me. Lieut. Gordon commands gun-boat No. 2, and Lieut. Lawrence, of the Enterprise, No. 5; these are the only changes. At half-past one A. M. the gun-boats, in two divisions, led by Captains Decatur and Somers, were ordered to advance, and take their stations close to the rocks at the entrance of the harbor, within grape-shot distance of the Bashaw's castle. The Syren, Argus, Vixen, Nautilus, Enterprise, and boats of the squadron accompanied them. At three A. M. the boats anchored with springs on, within pistol-shot of the rocks, and commenced a brisk firing on the shipping, town, batteries, and Bashaw's castle, which was warmly returned, but not as well directed; the ship's boats remained with the gun-boats, to assist in boarding the enemy's flotilla, if it should venture out; while the brigs and schooners kept under weigh, ready for the same service, or for annoying the enemy as occasion might present. At daylight, presuming that the gun-boats had nearly expended their ammunition, we weighed with the Constitution and stood in for the harbor. Fort English, the Bashaw's castle, crown and mole batteries, kept up a heavy fire on us as we advanced. At half-past five, I made the signal for the gun-boats to retire from action, and for the brigs and schooners to take

them in tow. We were then within two cables' length of the rocks, and commenced a heavy fire of round and grape on thirteen of the enemy's gun-boats and galleys, which were in pretty close action with our boats. We sunk one of the enemy's boats; at the same time, two more disabled, ran on shore to avoid sinking; the remainder immediately retreated. We continued running in until we were within musket-shot of the Crown and mole batteries, when we brought to, and fired upwards of three hundred round-shot, besides grape and canister, into the town, Bashaw's castle and batteries. We silenced the castle and two of the batteries for some time. At a quarter-past six, the gun-boats being all out of shot and in tow, I hauled off, after having been three-quarters of an hour in close action. The gun-boats fired upwards of four hundred round shot, besides grape and canister, with good effect. A large Tunisian galliot was sunk in the mole; a Spanish ship which had entered with an Ambassador from the Grand Seigneur, received considerable damage. The Tripoline galleys and gun-boats lost many men and were much cut.

The Bashaw's castle and town have suffered very much, as have their crown and mole batteries. Captains Decatur and Somers conducted their divisions of gun-boats with their usual firmness and address, and were well supported by the officers and men attached to them. The brigs and schooners were also well conducted during the action, and fired a number of shot at the enemy, but their guns are too light to do much execution. They suffered considerably in their sails and rigging. The officers and crew of the Constitution behaved well; I cannot, in justice to Captain Chauncey, omit noticing the very able assistance I received from him on the quarter-deck of the Constitution during the whole of the action. The damage which we have received is principally above the hull; three lower shrouds, two spring-stays, two topmast back-stays, trusses, chains, and lifts of the mainyard shot away.

Our sails had several cannon shot through them, and were beside considerably cut by grape; much of our running rigging cut to pieces, one of our anchor-stocks and our larboard cable shot away, and a number of grape-shot were sticking in different parts of the hull; but not a man hurt! A boat belonging to the John Adams, with a master's mate (Mr. Creighton) and eight men, was sunk by a double-headed shot from the batteries, while in tow of the Nautilus, which killed three men and badly wounded one, who, with Mr. Creighton, and the other four, were picked up by one of our boats. The only damage our gun-boats sustained, was in their rigging and sails, which were considerably cut with the enemy's round and grape shot.

At 11, A. M., we anchored with the squadron, five miles N. E. by N. from Tripoli, and repaired the damage received in the action.

29th and 30th, preparing the bomb vessels for service; supplying the gun-boats with ammunition, &c.

31st, a vessel arrived from Malta with provis-

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ions and stores; brought no news of Commodore Barron, or the frigates. We discharged this vessel's cargo, and ordered her to return.

September 2d, the bomb vessels having been repaired and ready for service, Lieutenants Dent and Robinson, resumed the command of them. Lieut. Morris, of the *Argus*, took command of No. 3; and Lieutenant Trippe having nearly recovered from his wounds, resumed the command of No. 6, which he so gallantly conducted on the 3d ultimo. Capt. Chauncey, with several young gentlemen, and sixty men from the *John Adams*, volunteered on board the *Constitution*. At 4, P. M., made the signal to weigh; kept under sail all night. At 11, P. M., a general signal to prepare for battle: a Spanish polacre, in ballast, came out of Tripoli, with an Ambassador of the Grand Seigneur on board, who had been sent from Constantinople to Tripoli, to confirm the Bashaw in his title; this ceremony takes place in all the Barbary Regencies, every five years. The captain of this vessel informed us, that our shot and shells had made great havoc and destruction in the city, and among the shipping, and that a vast number of people have been killed; also informs us, that three of the boats, which were sunk by our shot in the actions of the 3d and 28th ultimo, had been gotten up, repaired, and fitted for service.

3rd. At 2, P. M. Tripoli bore S. S. W. 2-1-2 miles distant, wind E. by N. At half past 2 the signals were made for the gun-boats to cast off, advance and attack the enemy's galleys and gun-boats, which were all under weigh in the eastern part of the harbor, whither they had for some time been working up against the wind. This was certainly a judicious movement of theirs, as it precluded the possibility of our boats going down to attack the town, without leaving the enemy's flotilla in their rear, and directly to windward. I accordingly ordered the bomb vessels to run down within proper distance of the town, and bombard it, while our gun-boats were to engage the enemy's galleys and boats to windward. At half past 3, P. M. our bombs having gained the station to which they were directed, anchored and commenced throwing shells into the city. At the same time our gun-boats opened a brisk fire on the galleys and within point blank shot, which was warmly returned by them and Fort English and by a new battery, a little to the westward; but as soon as our boats arrived within good musket-shot, of their galleys and boats, they gave way and retreated to the shore within the rocks and under cover of musketry from Fort English. They were followed by our boats and by the *Syren*, *Argus*, *Vixen*, *Nautilus* and *Enterprise*, as far as the reefs would permit them to go with prudence. The action was then divided. One division of our boats with the brigs and schooners attacked Fort English, whilst the other was engaged with the enemy's galleys and boats. The Bashaw's castle, the Mole, Crown, and several other batteries kept up a constant fire on our bomb vessels which were well conducted, and threw shells briskly into the town—but from their situation they were very much exposed, and in great dan-

ger of being sunk. I accordingly ran within them with the *Constitution*, to draw off the enemy's attention, and amuse them whilst the bombardment was kept up. We brought to within reach of grape, and fired eleven broadsides in the Bashaw's castle, town, and batteries, in a situation where more than seventy guns could bear upon us. One of their batteries was silenced. The town, castle, and other batteries, considerably damaged. By this time, it was half past four o'clock. The wind was increasing and inclining rapidly to the northward. I made the signal for the boats to retire from action, and for the brigs and schooners to take them in tow, and soon after hauled off with the *Constitution* to repair damages. Our maintop-sail was totally disabled by a shell from the batteries, which cut away the leach rope and several cloths of the sail. Another shell went through the foretop-sail, and one through the jib. All our sails considerably cut—two topmast backstays shot away, mainsheet, fore-tacks, lifts, braces, bowlines, and the running rigging generally very much cut, but no shot in our hull, excepting a few grape. Our gun-boats were an hour and fifteen minutes in action. They disabled several of the enemy's galleys and boats, and considerably damaged Fort English. Most of our boats received damage in their rigging and sails. The bomb vessel No 1, commanded by Lieutenant Robinson, was disabled; every shroud being shot away, the bed of the mortar rendered useless, and the vessel near sinking. She was however towed off. About fifty shells were thrown into the town, and our boats fired four hundred rounds, besides grape and canister. They were led into action by Captains Decatur, and Somers, with their usual gallantry. The brigs and schooners were handsomely conducted, and fired many shot with effect at Fort English, which they were near enough to reach with their carronades. They suffered considerably in their rigging, and the *Argus* received a thirty-two pound shot in the hull forward, which cut off a bower cable as it entered. We kept under weigh until 11 P. M. when we anchored, Tripoli bearing S. S. W. three leagues. I again with pleasure acknowledge the services of an able and active officer in Captain Chauncey, serving on the quarter deck of the *Constitution*. At sunrise I made the signal for the squadron to prepare for action. The carpenters were sent on board the bombs to repair damages, and our boats employed in supplying the bombs and gun-boats with ammunition, and to replace the expenditures.

Desirous of annoying the enemy, by all the means in my power, I directed to be put into execution a long contemplated plan of sending a fireship, or infernal, into the harbor of Tripoli, in the night, for the purpose of endeavoring to destroy the enemy's shipping, and shatter the Bashaw's castle and town. Captain Somers, of the *Nautilus*, having volunteered his services, had, for several days before this period, been directing the preparation of the ketch *Intrepid*, assisted by Lieutenants Wadsworth and Israel. About one hundred barrels of powder and one hundred and fifty fixed shells, were apparently judiciously

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disposed of on board her. The fuzes leading to the magazine, where all the powder was deposited, were calculated to burn a quarter of an hour.

September 4th.—The *Intrepid* being prepared for the intended service, Captain Somers and Lieutenant Wadsworth made choice of two of the fastest rowing boats in the squadron, for bringing them out. After reaching their destination and firing the combustible materials, which were to communicate with the fuzes, Captain Somers' boat was manned with four seamen from the *Nautilus*, and Lieutenant Wadsworth's with six from the *Constitution*. Lieutenant Israel accompanied them. At eight in the evening, the *Intrepid* was under sail, and standing for the port, with a leading breeze from the eastward. The *Argus*, *Vixen*, and *Nautilus*, convoyed her as far as the rock. On entering the harbor, several shot was fired at her from the batteries. In a few minutes after, when she had apparently nearly gained the intended place of destination, she suddenly exploded, without their having previously fired a room filled with splinters and other combustibles, which were intended to create a blaze, in order to deter the enemy from boarding, whilst the fire was communicating to the fuzes, which led to the magazine. The effect of the explosion awed their batteries into profound silence, with astonishment. Not a gun was afterward fired for the night. The shrieks of the inhabitants informed us that the town was thrown into the greatest terror and consternation by the explosion of the magazine, and the bursting and falling of shells in all directions. The whole squadron waited with the utmost anxiety to learn the fate of the adventurers, from a signal previously agreed on in case of success, but waited in vain; no signs of their safety were to be observed. The *Argus*, *Vixen*, and *Nautilus* hovered round the entrance of the port until sunrise, when they had a fair view of the whole harbor. Not a vestige of the ketch or her boats was to be seen. One of the enemy's largest gun-boats was missing, and three others were seen very much shattered and damaged, which the enemy were hauling on shore. From these circumstances I am led to believe that those boats were detached from the enemy's flotilla to intercept the ketch, and, without suspecting her to be a fire-ship, the missing boat had suddenly boarded her, when the gallant Somers and the heroes of his party, observing the other three boats surrounding them, and no prospect of escape, determined at once to prefer death and the destruction of the enemy, to captivity and torturing slavery, put a match to the train leading directly to the magazine, which at once blew the whole into the air, and terminated their existence. My conjectures respecting this affair are founded on a resolution, which Captain Somers, Lieutenants Wadsworth, and Israel had formed, neither to be taken by the enemy, nor suffer him to get possession of the powder on board the *Intrepid*. They expected to enter the harbor without discovery, but had declared, if they should be disappointed, and the enemy should board them, before they reached the point of destination, in such force as to leave them no hopes

of a safe retreat, that they would put a match to the magazine and blow themselves and their enemies up together—determined as there was no exchange of prisoners, that their country should never pay ransom for them, nor the enemy receive a supply of powder through their means. The disappearance of one of the enemy's boats, and the shattered condition of three others, confirm me in my opinion, that they were an advanced guard, detached from the main body of the flotilla on discovering the approach of the *Intrepid*, and that they attempted to board her before she had reached her point of destination, otherwise the whole of their shipping must have suffered and perhaps would have been totally destroyed. That she was blown up before she had gained her station is certain, by which the service has lost three very gallant officers. Captain Somers, and Lieutenants Wadsworth and Israel were officers of conspicuous bravery, talents and merit; they had uniformly distinguished themselves in the several actions—were beloved and lamented by the whole squadron.

September the 5th.—We were employed in supplying the gun-boats with ammunition, &c., and repairing the bomb vessels for another attack, but the wind shifting to the N. N. E. a heavy swell setting on shore, and other indications of bad weather determined me for greater safety to take the guns, mortars, shot and shells out of the boats into the *Constitution* and *John Adams*, which was accordingly done. The weather continuing to wear a threatening aspect until the seventh, and our ammunition being reduced to a quantity not more than sufficient for three vessels to keep up the blockade; no intelligence of the expected reinforcement; and the season so far advanced as to render it imprudent to hazard the gun-boats any longer on the station; I gave orders for the *John Adams*, *Syren*, *Nautilus*, *Enterprise*, and *Scourge* to take the bombs and gun-boats in tow, and proceed to Syracuse with them, the *Argus* and *Vixen* to remain with the *Constitution* to keep up the blockade.

September the 10th.—The United States ship President, Commodore Barron, and *Constellation*, Captain Campbell, hove in sight and soon joined company, when the command of the squadron was surrendered to Commodore Barron, with the usual ceremony. I continued in company with the squadron until the twelfth, when three strange ships came in sight standing direct for Tripoli. Chase was given and two of them boarded and taken possession of by the *Constitution*, the President in company, about four leagues from Tripoli, but not more than five miles from the land; while the *Constellation* and *Argus* were in chase of the third. The two boarded by the *Constitution* were loaded with about sixteen thousand bushels of wheat. Tripoli is in a state of starvation, and there can be no doubt but those cargoes were meant as a supply and relief to our enemies.

Considering the season too far advanced and weather too uncertain to hazard any further operations against Tripoli at present, Commodore Barron determined that the prizes should be sent to Malta, under convoy of the *Constitution*, it being neces-

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sary she should go into port to be recaulked and refitted. I notified Commodore Barron that it was my wish to return to the United States in the frigate John Adams Captain Chauncey; this readily and in the handsomest manner met his acquiescence. I shall accordingly return in that ship.

The service in this quarter cannot suffer from this arrangement, as Captain Decatur is at present without a ship, and my return will immediately place him in the exercise of the duties attached to that commission, which he has so gallantly earned, and his country generously bestowed. I shall feel a pleasure in leaving the Constitution under the command of that officer, whose enterprising and manly conduct I have often witnessed, and whose merits eminently entitle him to so handsome a command.

The other commanders merit the highest commendations for their prompt obedience to orders on all occasions, and for the zeal, spirit, and judgment which they displayed in the several attacks on the enemy's shipping and batteries, as well as for the general good order and discipline at all times observed on board their respective vessels. The officers of the squadron have conducted themselves in a most gallant and handsome manner; and the conduct of the different ships' companies has merited my warmest approbation since I have had the honor to command them.

It affords me much satisfaction to observe, that

we have neither had a duel nor court martial in the squadron since we left the United States.

I most sincerely regret the loss of our gallant countrymen who have sacrificed their lives to the honor of the service, and that it has not been in my power, consistent with the interest and expectation of our country, to liberate Captain Bainbridge and the unfortunate officers and crew of the Philadelphia. Be assured, sir, I have incessantly endeavored to effect this desirable object. I have no doubt but my successor will be able to effect their release, and establish peace on such terms as will reflect the highest honor on himself and his country.

September 17th.—Arrived at Malta with the two detained Greek vessels. We experienced very bad weather, but had the satisfaction to learn that the bombs and gun-boats had arrived safe at Syracuse the 15th instant without accident. Each of the Tripoline gun-boats which we have captured has two brass howitzers abaft, and a handsome copper gun in the bow, which carries a 29 pound shot, is 11½ feet long and weighs 6,600 pounds.

I send you a plan of the town and harbor of Tripoli, with the disposition of our squadron, and the enemy's flotilla, at the time of the several attacks, with sundry other papers.

I have the honor to be with the highest respect,
sir, yours, &c. EDWARD PREBLE.

Hon. SECRETARY OF THE NAVY.

Public Acts of Congress.

An Act concerning drawbacks on goods, wares, and merchandise.

Be it enacted, &c., That so much of the sixth section of the act, entitled "An act for laying and collecting duties on imports and tonnage within the territory ceded to the United States by the Treaty of the thirtieth of April, one thousand eight hundred and three, between the United States and the French Republic; and for other purposes," as prohibits the allowance of drawbacks of duties on goods, wares, and merchandise, exported from the port of New Orleans, other than those imported to the same place directly from a foreign port or place, shall be, and the same is hereby, repealed.

SEC. 2. *And be it further enacted,* That any goods, wares, or merchandise, which shall be exported from the United States, or the district of Mississippi, and the manner prescribed by law, to any foreign port or place, situated to the westward or southward of Louisiana, shall be deemed and taken to be entitled to such drawback of duties as would be allowable thereon, when exported to any other foreign port or place; anything in the act, entitled "An act to regulate the collection of duties on imports and tonnage," to the contrary notwithstanding.

This act shall commence and be in force from and after the first day of March next.

Approved, January 5, 1805.

An Act to divide the Indiana Territory into two separate Governments.

Be it enacted, &c., That, from and after the thirtieth day of June next, all that part of the Indiana Territory which lies north of a line drawn east from the southerly bend, or extreme, of Lake Michigan, until it shall intersect Lake Erie, and east of a line drawn from the said southerly bend through the middle of said lake to its northern extremity, and thence due north to the northern boundary of the United States, shall, for the purpose of temporary government, constitute a separate Territory, and be called Michigan.

SEC. 3. *And be it further enacted,* That there shall be established within the said Territory, a government in all respects similar to that provided by the ordinance of Congress, passed on the thirteenth day of July, one thousand seven hundred and eighty-seven, for the government of the territory Northwest of the river Ohio; and by an act passed on the seventh day of August, one thousand seven hundred and eighty-nine, entitled "An act to provide for the government of the territory Northwest of the river Ohio;" and the inhabitants thereof shall be entitled to and enjoy, all and singular, the rights, privileges, and advantages granted and secured to the people of the territory of the United States Northwest of the river Ohio by the said ordinance.

SEC. 2. *And be it further enacted,* That the officers of the said Territory, who, by virtue of this act shall be appointed by the President of the United States, by and with the advice and consent of the Senate, shall respectively exercise the

same powers, perform the same duties, and receive for their services the same compensations as by the ordinance aforesaid, and the laws of the United States, have been provided and established for similar officers in the Indiana Territory; and the duties and emoluments of Superintendent of Indian Affairs shall be united with those of Governor.

SEC. 4. *And be it further enacted,* That nothing in this act contained shall be construed so as in any manner to affect the government now in force in the Indiana Territory, further than to prohibit the exercise thereof within the said Territory of Michigan, from and after the aforesaid thirtieth day of June next.

SEC. 5. *And be it further enacted,* That all suits, process, and proceeding, which, on the thirtieth day of June next, shall be pending in the court of any county which shall be included within the said territory of Michigan, and also, all suits, process, and proceedings, which, on the said thirtieth day of June next, shall be pending in the General Court of the Indiana Territory in consequence of any writ of removal, or order for trial at bar, and which had been removed from any of the counties included within the limits of the Territory of Michigan aforesaid, shall, in all things concerning the same, be proceeded on, and judgments and decrees rendered thereon, in the same manner as if the said Indiana Territory had remained undivided.

SEC. 6. *And be it further enacted,* That Detroit shall be the seat of government of the said Territory until Congress shall otherwise direct.

Approved, January 11, 1805.

An Act declaring Cambridge, in the State of Massachusetts, to be a port of delivery.

Be it enacted, &c., That the town, or landing-place of Cambridge, in the State of Massachusetts, shall be a port of delivery, to be annexed to the district of Boston and Charlestown, and shall be subject to the same regulations as other ports of delivery in the United States.

Approved, January 11, 1805.

An Act authorizing the Corporation of Georgetown to make a dam or causeway from Mason's Island to the western shore of the river Potomac.

Be it enacted, &c., That the corporation of Georgetown have power to levy a tax, not exceeding one per cent. per annum, on the real property in said town, and its additions within the jurisdiction of the said corporation, for the purpose of defraying the expense of erecting a dam or causeway across that arm of the river Potomac which passes between Mason's Island and the western shore of the said river; that the same shall not be erected until the consent of the proprietor or proprietors of the island, and of the western shore of the river opposite thereto, shall be first obtained. The power hereby granted to the said corporation of levying an extra tax, to cease and determine when the object for which it is granted shall be completely effected.

Approved, January 19, 1805.

An Act making appropriations for the support of the Navy of the United States during the year one thousand eight hundred and five.

Be it enacted, &c., That for defraying the expenses of the Navy of the United States during the year one thousand eight hundred and five, the following sums be and the same are hereby appropriated, that is to say:

For the pay and subsistence of the officers, and the pay of the seamen, four hundred and fifteen thousand five hundred and seventy-eight dollars.

For provisions, two hundred and twenty-seven thousand seven hundred and eighty-six dollars and forty cents.

For medicine, instruments, hospital stores, and all expenses on account of the sick, ten thousand seven hundred and fifty dollars.

For repairs of vessels, store rent, and other contingent expenses, four hundred and eleven thousand nine hundred and fifty-one dollars and two cents.

For the pay and subsistence of the marine corps, including provisions for those on shore, and forage for the staff, eighty-two thousand five hundred and ninety-three dollars and sixty cents.

For clothing for the same, sixteen thousand five hundred and thirty-six dollars, and ninety-eight cents.

For military stores for the same, one thousand six hundred and thirty-five dollars.

For medicine, medical services, hospital stores, and all expenses on account of the sick belonging to the marine corps, one thousand two hundred and fifty dollars.

For quartermaster's and barrack-master's stores, officers' travelling expenses, armorers' and carpenters' bills, fuel, premium for enlisting, music, and other contingent expenses, eight thousand four hundred and nineteen dollars.

For the expense of navy yards docks, and other improvements, the pay of superintendents, storekeepers, clerks, and laborers, sixty thousand dollars.

For completing the marine barracks at the City of Washington, three thousand five hundred dollars.

Sec. 2. And be it further enacted, That the several sums herein specifically appropriated, and amounting altogether to the sum of one million two hundred and forty thousand dollars, shall be paid, first, out of the moneys accruing at the end of the year one thousand eight hundred and five from the duties laid by the act passed on the twenty-fifth day of March, one thousand eight hundred and four, entitled "An act further to protect the commerce and seamen of the United States against the Barbary Powers," provided, that the sum to be paid from the proceeds of the said duties shall not exceed five hundred and ninety thousand dollars; secondly, out of any balance remaining unexpended of former appropriations for the support of the Navy, and lastly, out of any moneys in the Treasury, not otherwise appropriated.

Approved, January 25, 1805.

An Act making an appropriation for completing the south wing of the Capitol, at the City of Washington, and for other purposes.

Be it enacted, &c., That a sum not exceeding one hundred and ten thousand dollars, shall be, and the same is hereby, appropriated, to be applied under the direction of the President of the United States, towards completing the south wing of the Capitol, at the City of Washington.

Sec. 2. And be it further enacted, That a sum not exceeding twenty thousand dollars shall be, and the same hereby is, appropriated, to be applied under the direction of the President of the United States, to such necessary alterations and repairs as he may deem requisite in the north wing of the Capitol, and other public buildings at the City of Washington; which said sums shall be paid out of any moneys in the Treasury, not otherwise appropriated.

Approved, January 25, 1805.

An Act to provide for completing the valuation of lands and dwelling-houses, and the enumeration of slaves, in South Carolina, and for other purposes.

Be it enacted, &c., That the Secretary of the Treasury be, and he is, hereby authorized and directed to employ clerks, for such compensation as he shall judge reasonable, to complete, register, and record, under the direction of the supervisor of the district of South Carolina, the lists and abstracts of the valuation of lands and dwelling-houses, and of the enumeration of slaves within the State of South Carolina; and under the direction of the supervisor aforesaid, to add to, or to deduct from the valuations aforesaid, of each individual, such a rate per centum as has been determined by the commissioners appointed for the said State, under the act, entitled "An act to provide for the valuation of lands and dwelling-houses, and the enumeration of slaves within the United States," agreeably to the provisions of the said act, of the act entitled "An act supplementary to the act entitled 'An act to provide for the valuation of lands and dwelling-houses, and the enumeration of slaves within the United States,' and of the act entitled 'An act to provide for equalizing the valuation of unseated lands,'" which lists and abstracts, thus completed in conformity with the revisions and equalizations made by the commissioners aforesaid, shall have the same force and effect as if they had been completed, registered, and recorded, under the direction of the commissioners aforesaid, agreeably to the provisions of the above-mentioned acts. The supervisor aforesaid shall be allowed, in addition to his annual compensation, at the rate of three dollars per diem, for each and every day employed by him, in completing or superintending the completion of the lists and abstracts aforesaid: *Provided,* That the whole amount of the said additional allowance shall not exceed five hundred dollars; and the said allowance, as well as the compensation of the clerks employed by virtue of this section, shall be paid out of the moneys appropriated, or which may hereafter be

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appropriated for defraying the expenses incident to the valuation of houses and lands, and the enumeration of slaves within the United States.

SEC. 2. *And be it further enacted*, That the supervisor of the district of South Carolina be, and he is hereby, authorized and directed, as soon as the assessment of the direct tax to be levied and collected in the State of South Carolina, by virtue of the act, entitled "An act to lay and collect a direct tax within the United States," shall have been completed, to appoint for the whole of the said State, one or more surveyors of the revenue, who shall be authorized to make out the lists containing the sums payable, according to such assessment, for every dwelling-house, tract, or lot of land and slave within the said State. Which lists shall have the same force and effect, as if they had been made for each assessment district, by a distinct surveyor of the revenue; the surveyor or surveyors of the revenue, thus appointed for the whole State of South Carolina, shall likewise perform all the other duties, exercise all the powers, and receive the same compensation, which by virtue of the provisions still in force in any former act or acts, were directed to be performed, exercised, and received by the surveyors of the revenue for the several assessment districts; and so much of any act, or acts, as directed the appointment of one surveyor of the revenue for each assessment district, is, so far as relates to the State of South Carolina, hereby repealed.

SEC. 3. *And be it further enacted*, That the several supervisors, or officers acting as supervisors, may, with the approbation of the Secretary of the Treasury, unite, whenever such measure shall be thought expedient for the better collection of the direct tax, two or more assessment districts into one district, and appoint only one collector of the said tax for the assessment districts, thus united; anything in any former act or acts to the contrary notwithstanding.

SEC. 4. *And be it further enacted*, That the accounting officers of the Treasury be, and they are hereby, authorized to settle the accounts of any of the commissioners or assessors employed in making the valuations and enumerations above mentioned, in the State of South Carolina, although the same may not have been presented to, and certified by the commissioners aforesaid, in conformity with the provisions of the act, entitled "An act to provide for the valuation of lands and dwelling-houses, and the enumeration of slaves within the United States."

SEC. 5. *And be it further enacted*, That any of the commissioners aforesaid, who shall, on the request of the Secretary of the Treasury, attend for the purpose of assisting the supervisor of the district of South Carolina, in completing the lists and abstracts of the valuations, and enumerations in the manner provided by the first section of this act, shall be allowed the same rate of compensation, as is provided by law for attending a meeting of the board of commissioners.

SEC. 6. *And be it further enacted*, That a sum not exceeding thirteen thousand five hundred and

ninety-three dollars, and twenty-three cents, to be paid out of any moneys in the Treasury, not otherwise appropriated, be, and the same is hereby appropriated, for defraying the further expenses incident to the valuation of houses and lands, and the enumeration of slaves within the United States.

Approved, January 30, 1805.

An Act concerning the mode of Surveying the Public Lands of the United States.

Be it enacted, &c. That the surveyor general shall cause all those lands north of the river Ohio, which by virtue of the act, entitled "An act providing for the sale of the lands of the United States, in the Territory northwest of the river Ohio, and above the mouth of the Kentucky river," were subdivided by running through the townships parallel lines each way, at the end of every two miles, and by marking a corner on each of the said lines, at the end of every mile; to be subdivided into sections by running straight lines from the mile corners thus marked to the opposite corresponding corners, and by marking on each of the said lines intermediate corners, as nearly as possible equidistant from the corners of the sections on the same. And the said surveyor general shall also cause the boundaries of all the half sections, which had been purchased previous to the first day of July last, and on which the surveying fees had been paid according to law by the purchaser, to be surveyed and marked by running straight lines from the half mile corners heretofore marked to the opposite corresponding corners; and intermediate corners shall, at the same time, be marked on each of the said dividing lines, as nearly as possible equidistant from the corners of the half section on the same line: *Provided*, That the whole expense of surveying and marking the lines shall not exceed three dollars for every mile which has not yet been surveyed, and which shall be actually run, surveyed, and marked by virtue of this section. And the expense of making the subdivisions, directed by this section, shall be defrayed out of the moneys appropriated, or which may be hereafter appropriated, for completing the surveys of the public lands of the United States.

SEC. 2. *And be it further enacted*, That the boundaries and contents of the several sections, half sections, and quarter sections of the public lands of the United States, shall be ascertained in conformity with the following principles, any act or acts to the contrary notwithstanding:

1st. All the corners marked in the surveys, returned by the surveyor general, or by the surveyor of the land south of the State of Tennessee, respectively, shall be established as the proper corners of sections, or subdivisions of sections, which they were intended to designate; and the corners of half and quarter sections, not marked on the said surveys, shall be placed as nearly as possible equidistant from those two corners which stand on the same line.

2d. The boundary lines, actually run and mark-

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ed in the surveys returned by the surveyor general, or by the surveyor of the land south of the State of Tennessee, respectively, shall be established as the proper boundary lines of the sections, or subdivisions, for which they were intended, and the length of such lines, as returned by either of the surveyors aforesaid, shall be held and considered as the true length thereof. And the boundary lines, which shall not have been actually run, and marked as aforesaid, shall be ascertained, by running straight lines from the established corners to the opposite corresponding corners; but in those portions of the fractional townships, when no such opposite corresponding corners have been or can be fixed, the said boundary lines shall be ascertained by running from the established corners, due north and south, or east and west lines, as the case may be, to the water course, Indian boundary line, or other external boundary of such fractional township.

3d. Each section, or subdivision of section, the contents whereof shall have been, or, by virtue of the first section of this act, shall be returned by the surveyor general, or by the surveyor of the public lands south of the State of Tennessee, respectively, shall be held and considered as containing the exact quantity, expressed in such return or returns: and the half sections and quarter sections, the contents whereof shall not have been thus returned, shall be held and considered as containing the one half, or the one fourth part, respectively, of the returned contents of the section of which they make a part.

SEC. 3. *And be it further enacted*, That so much of the act, entitled "An act making provision for the disposal of the lands in the Indiana Territory, and for other purposes," as provides the mode of ascertaining the true contents of sections or subdivisions of sections, and prevents the issue of final certificates, unless the said contents shall have been ascertained and a plot, certified by the district surveyor, lodged with the register, be, and the same is hereby, repealed.

Approved, February 11, 1805.

An Act for carrying into more complete effect the tenth article of the Treaty of Friendship, Limits, and Navigation, with Spain.

Be it enacted, &c., That whenever any Spanish vessel shall arrive in distress, in any port of the United States, having been damaged on the coasts, or within the limits of the United States, and her cargo shall have been unladen, in conformity with the provisions of the sixteenth section of the act, entitled "An act to regulate the collection of duties on imports and tonnage," the said cargo, or any part thereof, may, if the said ship or vessel should be condemned, as not seaworthy, or be deemed incapable of performing her original voyage, afterwards be reladen on board any other vessel or vessels, under the inspection of the officer who superintended the landing thereof, or other proper person. And no duties, charges, or fees, whatever, shall be paid on such part of the cargo, as may be reladed and carried away,

either in the vessel in which it was originally imported, or in any other whatever.

SEC. 2. *And be it further enacted*, That the collector of the district of Norfolk, in Virginia, shall be, and he hereby is, authorized and required to refund to the owners or agents of the Spanish brigantine Nancy (which vessel arrived in distress at that port, in the year one thousand eight hundred and four) the amount of the duties secured by him on such part of her cargo as was re-exported: *Provided*, That the debenture or debentures issued by the said collector, for the drawback of the duties on the exportation of the said cargo, shall be duly surrendered to him, and cancelled.

Approved, February 14, 1805.

An Act authorizing the Postmaster General to make a new contract for carrying the mail from Fayetteville, in North Carolina, to Charleston, in South Carolina.

Be it enacted, &c., That the Postmaster General shall be, and hereby is, authorized to make a new contract for carrying the mail in a line of stages between the town of Fayetteville, in the State of North Carolina, and the city of Charleston, in the State of South Carolina, upon such terms and conditions as he may deem most conducive to the interest of the United States: *Provided*, That he does not exceed the sum of four thousand two hundred dollars, annually, beyond the amount of the present contract; and that no contract made in virtue of this act shall extend beyond the time to which the present contract extends.

Approved, February 14, 1805.

An act making appropriations for the support of the Military Establishment of the United States, for the year one thousand eight hundred and five.

Be it enacted, &c., That, for defraying the expense of the Military Establishment of the United States, for the year one thousand eight hundred and five, for the Indian department, and for the expense of fortifications, arsenals, magazines, and armories, the following sums be, and the same hereby are, respectively appropriated, that is to say:

For the pay of the army of the United States, three hundred and two thousand seven hundred and ninety-six dollars.

For forage, four thousand four hundred and eighty-eight dollars.

For the subsistence of the officers of the army and corps of engineers, thirty one thousand three hundred and twenty-nine dollars and fourteen cents.

For the subsistence of non-commissioned officers, musicians, and privates, one hundred and seventy nine thousand and nine dollars and sixty-nine cents.

For clothing, eighty five thousand dollars.

For bounties and premiums, fifteen thousand dollars.

For medical and hospital department, twelve thousand dollars.

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For camp equipage, fuel, tools, expense of transportation, and other contingent expenses of the War Department, eighty-one thousand dollars.

For fortifications, arsenals, magazines, and armories, one hundred and thirty-three thousand two hundred and ninety-six dollars and eighty-eight cents.

For purchasing maps, plans, books, and instruments for the War Department, and military academy, five hundred dollars.

For the pay and subsistence of the commanders in Louisiana, five thousand nine hundred and seventy one dollars and seventy-seven cents.

For the Indian department, ninety-two thousand six hundred dollars.

SEC. 2. *And be it further enacted*, That the several appropriations hereinbefore made, shall be paid and discharged out of any moneys in the Treasury not otherwise appropriated.

Approved, February 14, 1805.

An Act supplementary to the act, entitled "An act to regulate the collection of duties on imports and tonnage."

Be it enacted, &c., That the same terms of credit which are granted by law for the payment of duties on articles the produce of the West Indies, and no other, shall be allowed on goods, wares, and merchandise, imported by sea into the United States, from all foreign ports and islands lying north of the equator, and situated on the eastern shores of America, or in its adjacent seas, bays, and gulfs.

SEC. 2. *And be it further enacted*, That it shall be lawful for any ship or vessel to proceed with any goods, wares, or merchandise, brought in her, and which shall, in the manifest delivered to the collector of the customs, be reported as destined or intended for any foreign port or place, from the district within which such ship or vessel shall first arrive, to such foreign port or place, without paying or securing the payment of any duties upon such goods, wares, or merchandise, as shall be actually re-exported in the said ship or vessel: *Provided*, That such manifest so declaring to re-export such goods, wares, or merchandise, shall be delivered to such collector within forty-eight hours after the arrival of such ship or vessel: *And provided, also*, That the master or commander of such ship or vessel shall give bond as required by the thirty-second section of the act, entitled "An act to regulate the collection of duties on imports and tonnage."

Approved, February 22, 1805.

An act to continue in force "An act declaring the consent of Congress to an act of the State of Maryland, passed the twenty-eighth day of December, one thousand seven hundred and ninety-three, for the appointment of a health officer."

Be it enacted, &c., That the consent of Congress be, and is hereby, granted and declared to the operation of an act of the General Assembly of Maryland, passed the twenty-eighth day of December, one thousand seven hundred and nine-

ty-three, entitled "An act to appoint a health officer for the port of Baltimore, in Baltimore county," so far as to enable the State aforesaid to collect a duty of one per cent. per ton on all vessels coming into the district of Baltimore, from a foreign voyage, for the purposes in said act intended.

SEC. 2. *And be it further enacted*, That this act shall be in force for nine years from the passing thereof, and from thence to the end of the next session of Congress thereafter, and no longer.

Approved, March 1, 1805.

An Act to amend the act, entitled "An act further to amend an act, entitled 'An act to lay and collect a direct tax within the United States.'"

Be it enacted, &c., That the supervisor of the district of Kentucky is hereby allowed the further time of three months from the end of two years after the completion of the sales of land within his district, for the payment of the direct tax, to perform the several duties enjoined by the fourth section of the act, entitled "An act further to amend the act, entitled 'An act to lay and collect a direct tax within the United States,' anything in the said act to the contrary notwithstanding.

Approved, March 1, 1805.

An Act making appropriations for the support of Government for the year one thousand eight hundred and five.

Be it enacted, &c., That, for the expenditure of the civil list in the present year, including the contingent expenses of the several Departments and officers; for the compensation of the several loan officers and their clerks, and for books and stationery for the same; for the payment of annuities and grants; for the support of the Mint Establishment; for the expenses of intercourse with foreign nations; for the support of light-houses, beacons, buoys, and public piers; for defraying expenses of surveying the public lands in the Territories of Indiana and Mississippi; for the unexpended balances of former appropriations, defraying the expenses of the second census, and the purchase and erection of wharves and stores under the quarantine law; and for satisfying certain miscellaneous claims, the following sums be, and the same hereby are, respectively, appropriated, that is to say:

For compensations granted by law to the members of the Senate and House of Representatives, their officers and attendants, estimated for a session of four months and a half continuance, one hundred and ninety-eight thousand, nine hundred and sixty-five dollars.

For the expense of firewood, stationery, printing, and all other contingent expenses of the two Houses of Congress, including the sum of three thousand dollars appropriated by the act of the sixth of December, one thousand eight hundred and four, twenty-eight thousand dollars.

For defraying the expenses incidental to dismantling the late library room of Congress, and fitting it up for the accommodation of the House

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of Representatives, at the ensuing session, seven hundred dollars.

For expenses of removal of the Library, and all other contingent expenses of the same, and Librarian's allowance for the year one thousand eight hundred and five, nine hundred dollars.

For the expense of labelling, lettering, and numbering five thousand seven hundred volumes of laws and journals of the old Congress, directed by the act of the present session for the disposal of certain copies of the laws of the United States, to be deposited in the Library, five hundred and seventy dollars.

For compensation to the President and Vice President of the United States, thirty thousand dollars.

For compensation to the Secretary of State, clerks, and persons employed in that Department, eleven thousand three hundred and sixty dollars.

For incidental and contingent expenses in said Department, four thousand two hundred dollars.

For printing and distributing copies of the laws of the second session of the eighth Congress, and printing the laws in newspapers, eight thousand two hundred and fifty dollars.

For printing the laws and other contingent expenses of the government of the Indiana Territory, in consequence of the union with it of that of the Territory of Louisiana, three hundred and fifty dollars.

For special messengers charged with despatches, two thousand dollars.

For compensation to the Secretary of the Treasury, clerks, and persons employed in his office, including those engaged on the business belonging to the late office of the Commissioner of the Revenue, thirteen thousand four hundred and forty-nine dollars and eighty-one cents.

For expenses of translating foreign languages; allowance to the person employed in receiving and transmitting passports and sea-letters; stationery and printing, one thousand dollars.

For compensation to the Comptroller of the Treasury, clerks, and persons employed in his office, twelve thousand nine hundred and seventy-seven dollars and eight cents.

For expense of stationery, printing, and incidental and contingent expenses in the Comptroller's office, eight hundred dollars.

For compensation to the Auditor of the Treasury, clerks, and persons employed in his office, twelve thousand two hundred and twenty dollars and ninety-three cents.

For expense of stationery, printing, and incidental and contingent expenses in the office of the Auditor of the Treasury, five hundred dollars.

For compensation to the Treasurer, clerks, and persons employed in his office, six thousand two hundred and twenty-seven dollars and forty-five cents.

For the expense of stationery, printing and incidental and contingent expenses in the Treasurer's office, three hundred dollars.

For compensation to the Register of the Treasury, clerks, and persons employed in his office, sixteen thousand and fifty-two dollars.

For expense of stationery and printing in the Register's office, (including books for the public stock and for the arrangement of the marine papers,) two thousand eight hundred dollars.

For compensation to the Secretary of the Commissioners of the Sinking Fund, two hundred and fifty dollars.

For compensation of the clerks employed for the purpose of making drafts of the several surveys of land in the Territory of the United States Northwest of the river Ohio, and in keeping the books of the Treasury in relation to the sales of lands at the several land offices, two thousand six hundred dollars.

For fuel and other contingent expenses of the Treasury Department, four thousand dollars.

For defraying the expenses incident to the stating and printing the public accounts for the year one thousand eight hundred and five, one thousand two hundred dollars.

For purchasing books, maps, and charts, for the use of the Treasury Department, four hundred dollars.

For compensation to a superintendent employed to secure the buildings and records of the Treasury, during the year one thousand eight hundred and five, including the expense of two watchmen, and for the repair of two fire engines, buckets, lanterns, and other incidental expenses, one thousand one hundred dollars.

For the erection of a fire-proof brick building for the preservation of the records of the Treasury; the cellars in which they have hitherto been kept being found, from their dampness, improper for that use, nine thousand dollars.

For compensation to the Secretary of War, clerks, and persons employed in his office, eleven thousand two hundred and fifty dollars.

For the expenses of fuel, stationery, printing, and other contingent expenses of the office of the Secretary of War, one thousand dollars.

For compensation to the Accountant of the War Department, clerks, and persons employed in his office, ten thousand nine hundred and ten dollars.

For contingent expenses in the office of the Accountant of the War Department, one thousand dollars.

For compensation to clerks employed in the Paymaster's office, one thousand eight hundred dollars.

For fuel in said office, ninety dollars.

For compensation to the Purveyor of Public Supplies, clerks, and persons employed in his office, including a sum of twelve hundred dollars, for compensation to his clerks, in addition to the sum allowed by the act of the second day of March, one thousand seven hundred and ninety-nine, and for expense of stationery, store rent and fuel for the said office, four thousand six hundred dollars.

For compensation to the Secretary of the Navy, clerks, and persons employed in his office, nine thousand one hundred and ten dollars.

For expense of fuel, stationery, printing and other contingent expenses in the office of the Secretary of the Navy, two thousand dollars.

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For compensation to the Accountant of the Navy, clerks, and persons employed in his office, including the sum of one thousand one hundred dollars, for compensation to his clerks, in addition to the sum allowed by the act of the second of March, one thousand seven hundred and ninety-nine, ten thousand four hundred and ten dollars.

For contingent expenses in the office of the Accountant of the Navy, seven hundred and fifty dollars.

For compensation to the Postmaster General, Assistant Postmaster General, clerks, and persons employed in the Postmaster General's office, including a sum of four thousand five hundred and ninety-five dollars, for compensation to his clerks, in addition to the sum allowed by the act of the second of March, one thousand seven hundred and ninety-nine, thirteen thousand nine hundred and fifty-five dollars.

For expense of fuel, candles, house rent for the messenger, stationery, chests, &c., exclusive of expenses of prosecution, portmanteaus, mail locks, and other expenses incident to the Department, these being paid for by the Postmaster General out of the funds of the office, two thousand dollars.

For compensation to the several loan officers, thirteen thousand two hundred and fifty dollars.

For compensation to the clerks of the several Commissioners of Loans, and an allowance to certain loan officers, in lieu of clerk hire, and to defray the authorized expenses of the several loan offices, thirteen thousand dollars.

For defraying the expense of clerk hire in the office of the Commissioner of Loans of the State of Pennsylvania, in consequence of the removal of the offices of the Treasury Department, in the year one thousand eight hundred, to the permanent seat of Government, two thousand dollars.

For compensation to the Surveyor General and the clerks employed by him, and for expense of stationery and other contingencies of the Surveyor General's office, three thousand two hundred dollars.

For compensation to the surveyor of the lands south of the State of Tennessee, clerks employed in his office, stationery, and other contingencies, three thousand two hundred dollars.

For compensation to the officers of the Mint :

The director, two thousand dollars.

The treasurer, one thousand two hundred dollars.

The assayer, one thousand five hundred dollars.

The chief coiner, one thousand five hundred dollars.

The melter and refiner, one thousand five hundred dollars.

The engraver, one thousand two hundred dollars.

One clerk, at seven hundred dollars.

And two, at five hundred dollars, each.

For the wages of persons employed at the different branches of melting, coining, carpenters', millwrights', and smiths' work, including the sum of eight hundred dollars per annum, allowed to an

assistant coiner and die forger, who also oversees the execution of the iron work, six thousand five hundred dollars.

For the repairs of furnaces, cost of rollers and screws, timber, bar-iron, lead, steel, potash, and for all other contingencies of the Mint, two thousand nine hundred dollars.

For compensation to the Governor, judges, secretary, and Legislative Council of the Territory of Orleans, nineteen thousand two hundred and forty dollars.

For incidental and contingent expenses of the Legislative Council, and of the secretary of the said Territory, two thousand dollars.

For compensation to the Governor, judges, and secretary of the Mississippi Territory, five thousand one hundred and fifty dollars.

For expenses of stationery, office rent, and other contingent expenses in the said Territory, three hundred and fifty dollars.

For compensation to the Governor, judges, and secretary of the Indiana Territory, five thousand one hundred and fifty dollars.

For the expenses of stationery, office rent, and other contingent expenses in the said territory, three hundred and fifty dollars.

For the discharge of such demands against the United States, on account of the civil department, not otherwise provided for, as shall have been admitted in a due course of settlement at the Treasury, and which are of a nature, according to the usage thereof, to require payment in specie, two thousand dollars.

For additional compensation to the clerks of the several Departments of State, Treasury, War, and Navy, and of the General Post Office, not exceeding, for each department respectively, fifteen per centum in addition to the sums allowed by the act, entitled "An act to regulate and fix the compensation of clerks," eleven thousand eight hundred and eighty-five dollars.

For compensation granted by law to the Chief Justice, associate judges, and district judges of the United States, including the chief justice and two associate judges of the District of Columbia, and to the Attorney General, fifty-five thousand nine hundred dollars.

For the like compensation granted to the several district attorneys of the United States, three thousand four hundred dollars.

For compensation to the marshals of the districts of Maine, New Hampshire, Vermont, Kentucky, Ohio, East and West Tennessee, and Orleans, one thousand six hundred dollars.

For defraying the expenses of the supreme, circuit, and district courts of the United States, including the District of Columbia, and of jurors and witnesses, in aid of the funds arising from fines, forfeitures, and penalties, and likewise for defraying the expense of prosecution for offences against the United States, and for safe-keeping of prisoners, forty thousand dollars.

For the payment of sundry pensions granted by the late Government, nine hundred dollars.

For the payment of an annuity granted to the children of the late Colonel John Harding and

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Major Alexander Trueman, by an act of Congress, passed the fourteenth of May, one thousand eight hundred, six hundred dollars.

For the payment of the annual allowance to the invalid pensioners of the United States, from the fifth of March, one thousand eight hundred and six, ninety-eight thousand dollars.

For the maintenance and support of light-houses, beacons, buoys, and public piers, and stake-
age of channels, bars, and shoals, and certain contingent expenses, one hundred and fifteen thousand two hundred and nine dollars and thirty-six cents.

For fixing buoys in Long Island sound, in addition to the sums heretofore appropriated for that object, three thousand dollars.

For erecting beacons in the harbor of New York, in addition to the sums heretofore appropriated for that object, six thousand dollars.

For erecting a beacon and placing buoys near the entrance of Savannah river, being an expense incurred under the act of the sixteenth day of July, one thousand seven hundred and ninety-eight, (the balance of a former appropriation for the same object, having been carried to the credit of the surplus fund,) two thousand four hundred and ninety-four dollars and eighty-nine cents.

For reviving so much of unexpended balances of appropriations granted by an act passed the sixth of April, one thousand eight hundred and two, and which have been carried to the surplus fund, to wit:

For erecting public piers in the river Delaware, five thousand eight hundred and eighty-eight dollars and seventy-nine cents.

For erecting certain light-houses, and fixing buoys in Long Island sound, nine thousand six hundred and seventy-eight dollars and thirty-eight cents.

And for building a light-house on Cumberland South Point, four thousand dollars.

For completing the light-house at the mouth of the Mississippi, and the light-house at or near the pitch of Cape Lookout, in addition to the sum heretofore appropriated to those objects, by the act of the twenty-sixth of March, one thousand eight hundred and four, twenty thousand dollars.

Towards completing the surveys of public lands in the State of Ohio, and in the Indiana and Mississippi Territories, forty thousand dollars.

For the discharge of such miscellaneous claims against the United States, not otherwise provided for, as shall have been admitted in due course of settlement at the Treasury, and which are of a nature, according to the usage thereof, to require payment in specie, four thousand dollars.

For defraying certain expenses heretofore incurred in the War and Navy Departments, and which, in due course of settlement in those departments, have been adjusted, and cannot be discharged out of any existing appropriation, twenty thousand dollars.

For the expense of taking the second census of the inhabitants of the United States, being the balance of a former appropriation carried to the

surplus fund, fourteen thousand one hundred and sixty-two dollars and seventy-seven cents.

For the expense of wharves and stores for quarantine ships and vessels, being the balance of a former appropriation carried to the credit of the surplus fund, seventeen thousand one hundred and forty-three dollars and one cent.

For the expense of returning the votes for President and Vice President of the United States for the term commencing the fourth day of March, one thousand eight hundred and five, one thousand six hundred and twenty-four dollars.

For defraying the contingent expenses of Government, (the unexpended balance of a former appropriation for the same object, being carried to the credit of the surplus fund,) twenty thousand dollars.

For expenses of intercourse with foreign nations, fifty-seven thousand and fifty dollars.

For the expenses of the intercourse between the United States and the Barbary Powers, including the compensation of the Consuls at Algiers, Morocco, Tunis, and Tripoli, sixty-three thousand five hundred dollars.

For the contingent expenses of intercourse with the Barbary Powers, two hundred thousand dollars.

For the relief and protection of distressed American seamen, five thousand dollars.

For the salaries of the agents at Paris and Madrid, for prosecuting claims in relation to captures, four thousand dollars.

For payment of demands for French vessels and property captured, pursuant to the convention between the United States and the French Republic, the balance of a former appropriation for the same object, by the act of the third of April, one thousand eight hundred and two, having been carried to the surplus fund, twenty-one thousand dollars.

SEC. 2. *And be it further enacted*, That the several appropriations, hereinbefore made, shall be paid and discharged out of the fund of six hundred thousand dollars, reserved by the act "making provision for the debt of the United States," and out of the moneys in the Treasury, not otherwise appropriated.

Approved, March 1, 1805.

An Act further providing for the government of the Territory of Orleans.

Be it enacted, &c., That the President of the United States be, and he is hereby, authorized to establish within the Territory of Orleans, a government in all respects similar, (except as is herein otherwise provided,) to that now exercised in the Mississippi Territory; and shall, in the recess of the Senate, but to be nominated at their next meeting, for their advice and consent, appoint all the officers necessary therein, in conformity with the ordinance of Congress, made on the thirteenth day of July, one thousand seven hundred and eighty-seven; and that from and after the establishment of the said government, the inhabitants of the Territory of Orleans, shall be entitled to and enjoy

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all the rights, privileges, and advantages secured by the said ordinance, and now enjoyed by the people of the Mississippi Territory.

SEC. 2. *And be it further enacted*, That so much of the said ordinance of Congress, as relates to the organization of a General Assembly, and prescribes the powers thereof, shall, from and after the fourth day of July next, be in force in the said Territory of Orleans; and in order to carry the same into operation, the Governor of the said Territory shall cause to be elected twenty-five representatives, for which purpose he shall lay off the said Territory into convenient election districts, on or before the first Monday of October next, and give due notice thereof throughout the same; and shall appoint the most convenient time and place within each of the said districts, for holding the elections: and shall nominate a proper officer or officers to preside at and conduct the same, and to return to him the names of the persons who may have been duly elected. All subsequent elections shall be regulated by the Legislature; and the number of representatives shall be determined, and the apportionment made, in the manner prescribed by the said ordinance.

SEC. 3. *And be it further enacted*, That the representatives to be chosen as aforesaid shall be convened by the Governor, in the city of Orleans, on the first Monday in November next; and the first General Assembly shall be convened by the Governor as soon as may be convenient, at the city of Orleans, after the members of the Legislative Council shall be appointed and commissioned; and the General Assembly shall meet, at least once in every year, and such meeting shall be on the first Monday in December, annually, unless they shall, by law, appoint a different day. Neither house, during the session, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two branches are sitting.

SEC. 4. *And be it further enacted*, That the laws in force in the said Territory, at the commencement of this act, and not inconsistent with the provisions thereof, shall continue in force, until altered, modified, or repealed by the Legislature.

SEC. 5. *And be it further enacted*, That the second paragraph of the said ordinance, which regulates the descent and distribution of estates; and also the sixth article of compact which is annexed to, and makes part of said ordinance, are hereby declared not to extend to, but are excluded from all operation within the said Territory of Orleans.

SEC. 6. *And be it further enacted*, That the Governor, secretary, and judges, to be appointed by virtue of this act, shall be severally allowed the same compensation which is now allowed to the Governor, secretary, and judges, of the Territory of Orleans. And all the additional officers authorized by this act, shall respectively receive the same compensation for their services, as are by law established for similar offices in the Mississippi Territory, to be paid quarter yearly out of the revenues of impost and tonnage accruing within the said Territory of Orleans.

SEC. 7. *And be it further enacted*, That whenever it shall be ascertained by an actual census, or enumeration of the inhabitants of the Territory of Orleans, taken by proper authority, that the number of free inhabitants included therein shall amount to sixty thousand, they shall thereupon be authorized to form for themselves a constitution and State government, and be admitted into the Union upon the footing of the original States, in all respects whatever, conformably to the provisions of the third article of the treaty concluded at Paris, on the thirteenth of April, one thousand eight hundred and three, between the United States and the French Republic: *Provided*, That the constitution so to be established shall be republican, and not inconsistent with the constitution of the United States, nor inconsistent with the ordinance of the late Congress, passed the thirteenth day of July, one thousand seven hundred and eighty-seven, so far as the same is made applicable to the territorial government hereby authorized to be established: *Provided, however*, That Congress shall be at liberty, at any time prior to the admission of the inhabitants of the said Territory to the right of a separate State, to alter the boundaries thereof as they may judge proper: *Except only*, That no alteration shall be made, which shall procrastinate the period for the admission of the inhabitants thereof to the rights of a State government according to the provision of this act.

SEC. 8. *And be it further enacted*. That so much of an act, entitled "An act erecting Louisiana into two territories, and providing for the temporary government thereof," as is repugnant with this act, shall, from and after the first Monday of November next, be repealed. And the residue of the said act shall continue in full force until repealed, anything in the sixteenth section of the said act to the contrary notwithstanding.

Approved, March 2, 1805.

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An Act further to amend an act, entitled "An act regulating the grants of land, and providing for the disposal of the lands of the United States south of the State of Tennessee."

Be it enacted, &c. That persons who may have obtained or shall obtain certificates from the Board of Commissioners appointed to ascertain the claims to lands in the Mississippi Territory, shall be allowed three months after the respective date of such certificates, for entering the same with the register of the proper land office: and certificates thus entered shall have the same force and effect as if they had been duly entered with the said register, on or before the first day of January, one thousand eight hundred and five.

SEC. 2. *And be it further enacted*, That the Commissioners appointed to ascertain the claims to land in the above-mentioned Territory, east of Pearl river, shall be authorized to grant certificates for lands lying in the island known by the name of Nannee Hubba, formed by the cut-off of the river Tombigbee and Alabama; and persons having claims for lands lying either in said island or east of the Tombigbee and Alaba-

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maha rivers, shall be permitted to file the same with the register of the land office, till the first day of May, one thousand eight hundred and five; and the Commissioners shall decide on the same in the same manner as if they had been presented before the thirty-first day of March, one thousand eight hundred and four.

SEC. 3. *And be it further enacted*, That each of the last-mentioned Commissioners shall be allowed at the rate of six dollars a day, for every day he shall attend subsequent to the first day of April, one thousand eight hundred and five: *Provided*, That such additional allowance shall not exceed five hundred dollars for each Commissioner.

SEC. 4. *And be it further enacted*, That the clerk of each of the Boards of Commissioners appointed to ascertain the claims of lands in the above-mentioned Territory, shall be allowed at the rate of seven hundred and fifty dollars a year, from the time when he entered upon the duties of his office to the time when the board shall adjourn *sine die*.

SEC. 5. *And be it further enacted*, That persons claiming lands in the Mississippi Territory, by virtue of British grants, legally and fully completed, who may not have filed their claims with the proper register of the land office, in conformity with the provisions heretofore made for that purpose, may, until the first day of December, one thousand eight hundred and five, file such claims with the register of the land office west of Pearl river, and have the same recorded. And the said register shall on or before the first day of January, one thousand eight hundred and six, make to the Secretary of the Treasury a full report of all the British grants thus recorded; which report shall immediately after be laid before Congress. The lands contained in such grants shall not be otherwise disposed of until the end of one year, after that time. And if any such person shall neglect to file such British grant, and to have the same recorded, in the manner and time hereby provided, neither such grant nor any other evidence of such claim, which shall not have been recorded as above directed, shall ever after be considered or admitted as evidence in any court of the United States, or against any title, legally and fully executed, derived from the Spanish Government; any act or acts to the contrary notwithstanding.

Approved, March 2, 1805.

An Act for ascertaining and adjusting the titles and claims to land, within the Territory of Orleans, and the District of Louisiana.

Be it enacted, &c., That any person or persons, and the legal representatives of any person or persons, who, on the first day of October, in the year one thousand eight hundred, were resident within the territories ceded by the French Republic to the United States, by the treaty of the thirtieth of April, one thousand eight hundred and three, and who had, prior to the said first day of October, one thousand eight hundred, obtained from the French or Spanish Governments respectively,

during the time either of the said Governments had the actual possession of said Territories, any duly registered warrant, or order of survey for lands lying within the said Territories to which the Indian title had been extinguished, and which were on that day actually inhabited and cultivated by such person or persons, or for his or their use, shall be confirmed in their claims to such lands, in the same manner as if their titles had been completed: *Provided, however*, That no such incomplete title shall be confirmed, unless the person in whose name such warrant or order of survey had been granted, was, at the time of its date, either the head of a family, or above the age of twenty-one years; nor unless the conditions and terms on which the completion of the grant might depend, shall have been fulfilled.

SEC. 2. *And be it further enacted*, That to every person, or to the legal representative or representatives of every person, who, being either the head of a family, or twenty-one years of age, had, prior to the twentieth day of December, one thousand eight hundred and three, with permission of the proper Spanish officer, and in conformity with the laws, usages, and customs of the Spanish Government, made an actual settlement on a tract of land within the said Territories, not claimed by virtue of the preceding section, or of any Spanish or French grant made and completed before the first day of October, one thousand eight hundred, and during the time the Government which made such grant had the actual possession of the said Territories, and who did on the said twentieth day of December, one thousand eight hundred and three, actually inhabit and cultivate the said tract of land; the tract of land thus inhabited and cultivated shall be granted: *Provided, however*, That not more than one tract shall be thus granted to any one person, and the same shall not contain more than one mile square, together with such other and further quantity, as heretofore has been allowed for the wife and family of such actual settler, agreeably to the laws, usages, and customs, of the Spanish Government: *Provided, also*, That this donation shall not be made to any person who claims any other tract of land in the said Territories by virtue of any French or Spanish grant.

SEC. 3. *And be it further enacted*, That, for the purpose of more conveniently ascertaining the titles and claims to land in the Territory ceded as aforesaid, the Territory of Orleans shall be laid off into two districts, in such manner as the President of the United States shall direct; in each of which, he shall appoint, in the recess of the Senate, but who shall be nominated at their next meeting, for their advice and consent, a register, who shall receive the same annual compensation, give security in the same manner, and in the same sums, and whose duties and authorities shall in every respect be the same in relation to the lands which shall hereafter be disposed of at their offices, as are by law provided with respect to the registers in the several offices established for the disposal of the lands of the United States north of the river Ohio, and above the mouth of Ken-

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tucky river. The President of the United States shall likewise appoint a recorder of land titles in the district of Louisiana, who shall give security in the same manner, and in the same sums, and shall be entitled to the same annual compensation, as the registers of the several land offices.

SEC. 4. *And be it further enacted,* That every person claiming lands in the above-mentioned Territories, by virtue of any legal French or Spanish grants made and completed before the first day of October, one thousand eight hundred, and during the time the Government which made such grant had the actual possession of the Territories, may, and every person claiming lands in the said Territories, by virtue of the two first sections of this act, or by virtue of any grant or incomplete title, bearing date subsequent to the first day of October, one thousand eight hundred, shall, before the first day of March, one thousand eight hundred and six, deliver to the register of the land office, or recorder of land titles, within whose district the land may be, a notice in writing, stating the nature and extent of his claims, together with a plat of the tract or tracts claimed; and shall also, on or before that day, deliver to the said register or recorder, for the purpose of being recorded, every grant, order of survey, deed, conveyance, or other written evidence of his claim; and the same shall be recorded by the register or recorder, or by the translator hereinafter mentioned, in books to be kept by them for that purpose, on receiving from the parties, at the rate of twelve-and-a-half cents for every hundred words contained in such written evidence of their claim: *Provided, however,* That, where lands are claimed by virtue of a complete French or Spanish grant as aforesaid, it shall not be necessary for the claimant to have any other evidence of his claim recorded, except the original grant or patent, together with the warrant or order of survey, and the plat; but all the other conveyances or deeds shall be deposited with the register or recorder, to be by them laid before the commissioners hereinafter directed to be appointed, when they shall take the claim into consideration. And if such person shall neglect to deliver such notice, in writing, of his claim, together with the plat as aforesaid, or cause to be recorded such written evidence of the same, all his right, so far as the same is derived from the two first sections of this act, shall become void, and forever thereafter be barred; nor shall any incomplete grant, warrant, order of survey, deed of conveyance, or other written evidence, which shall not be recorded as above directed, ever after be considered, or admitted as evidence in any court of the United States, against any grant derived from the United States. The said register and recorder shall commence the duties hereby enjoined on them, on or before the first day of September next, and continue to discharge the same, at such place, in their respective districts, as the President of the United States shall direct.

SEC. 5. *And be it further enacted,* That two persons to be appointed by the President alone, for the district of Louisiana, and two persons, to

be in the same manner appointed for each of the districts directed by this act to be laid off in the Territory of Orleans, shall, together with the register or recorder of the district for which they may be appointed, be commissioners for the purpose of ascertaining within their respective districts, the rights of persons claiming under any French or Spanish grant as aforesaid, or under the two first sections of this act. The said commissioners shall, previous to their entering on the duties of their appointment, respectively take and subscribe the following oath or affirmation, before some person qualified to administer the same: "I, ———, do solemnly swear (or affirm) that I will impartially exercise and discharge the duties imposed on me by an act of Congress, entitled 'An act for ascertaining and adjusting the titles and claims to land within the Territory of Orleans, and the district of Louisiana,' to the best of my skill and judgment." It shall be the duty of the said commissioners to meet in their respective districts, at such place as the President shall have directed therein, for the residence of the register or recorder, on or before the first day of December next, and they shall not adjourn to any other place, nor for a longer time than three days, until the first day of March, one thousand eight hundred and six, and until they shall have completed the business of their appointment. Each board, or a majority of each board, shall, in their respective districts, have power to hear and decide in a summary manner, all matters respecting such claims, also to administer oaths, to compel the attendance of and examine witnesses, and such other testimony as may be adduced, to demand and obtain, from the proper officer and officers, all public records, in which grants of land, warrants, or orders of survey, or any other evidence of claims to land, derived from either the French or Spanish Governments, may have been recorded; to take transcripts of such record or records, or of any part thereof; to have access to all other records of a public nature, relative to the granting, sale, transfer, or titles of lands, within their respective districts; and to decide in a summary way, according to justice and equity, on all claims filed with the register or recorder, in conformity with the provisions of this act, and on all complete French or Spanish grants, the evidence of which, though not thus filed, may be found of record on the public records of such grants; which decisions shall be laid before Congress in the manner hereinafter directed, and be subject to their determination thereon: *Provided, however,* That nothing in this act contained, shall be construed so as to recognise any grant or incomplete title, bearing date subsequent to the first day of October, one thousand eight hundred, or to authorize the commissioners aforesaid to make any decision thereon. The said boards respectively shall have power to appoint a clerk, whose duty it shall be to enter in a book to be kept for that purpose, full and correct minutes of their proceedings and decisions, together with the evidence on which such decisions are made, which books and papers on the dissolution of the boards, shall be

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deposited in the respective offices of the registers of the land offices, or of the recorder of land titles of the district; and the said clerk shall prepare two transcripts of all the decisions made by the commissioners in favor of the claimants to land; both of which shall be signed by a majority of the said commissioners, and one of which shall be transmitted to the officer exercising in the district the authority of Surveyor General; and the other to the Secretary of the Treasury. It shall likewise be the duty of the said commissioners, to make to the Secretary of the Treasury a full report of all the claims filed with the register of the proper land office, or recorder of land titles, as above directed, which may have been rejected, together with the substance of the evidence adduced in support thereof, and such remarks thereon as they may think proper; which reports, together with the transcripts of the decisions of the commissioners in favor of the claimants, shall be laid by the Secretary of the Treasury before Congress, at their next ensuing meeting. When any Spanish or French grant, warrant, or order of survey, as aforesaid, shall be produced to either of the said boards, for lands, which were not at the date of such grant, warrant, or order of survey, or within one year, thereafter, inhabited, cultivated, or occupied, by, or for the use of the grantee; or whenever either of the said boards shall not be satisfied that such grant, warrant, or order of survey, did issue at the time when the same bears date, but that the same is antedated or otherwise fraudulent; the said commissioners shall not be bound to consider such grant, warrant, or order of survey, as conclusive evidence of the title, but may require such other of its validity as they may deem proper. Each of the commissioners, and clerks aforesaid shall be allowed a compensation of two thousand dollars in full for his services as such; and each of the said clerks shall, previous to his entering on the duties of his office, take and subscribe the following oath or affirmation, to wit: "I, ———, do solemnly swear (or affirm) that I will truly and faithfully discharge the duties of a clerk to the board of commissioners for examining the claims to land, as enjoined by an act of Congress, entitled 'An act ascertaining and adjusting the titles and claims to land within the Territory of Orleans, and the district of Louisiana.'" Which oath or affirmation shall be entered on the minutes of the board.

Sec. 6. *And be it further enacted*, That the Secretary of the Treasury shall be, and he is hereby, authorized to employ three agents, one for each board, and whose compensation shall not exceed one thousand five hundred dollars each, for the purpose of appearing before the commissioners in the behalf of the United States, to investigate the claims for lands, and to oppose all such as said agents may deem fraudulent and unfounded. It shall also be the duty of the said agent for the district of Louisiana, to examine into, and investigate the titles and claims, if any there be, to the lead mines within the said district, to collect all the evidence within his power, with respect to the claims to, and value of the said

mines, and to lay the same before the commissioners, who shall make a special report thereof, with their opinions thereon, to the Secretary of the Treasury, to be by him laid before Congress, at their next ensuing session. The said board of commissioners shall each be authorized to employ a translator of the Spanish and French languages, to assist them in the despatch of the business which may be brought before them, and for the purpose of recording Spanish and French grants, deeds, or other evidences on the register's books. The said translator shall receive for the recording done by him, the fees already provided by law, and may be allowed not exceeding fifty dollars for every month he shall be employed; provided that the whole compensation, other than that arising from the fees, shall not exceed six hundred dollars.

SEC. 7. *And be it further enacted*, That the powers vested by law in the surveyor of the lands of the United States, south of the State of Tennessee, shall extend over all the public lands of the United States, to which the Indian title has been or shall hereafter be extinguished within the said Territory of Orleans; and it shall be the duty of the said surveyor to cause such of the said lands as the President of the United States shall expressly direct, to be surveyed and divided, as nearly as the nature of the country will admit, in the same manner and under the same regulations as is provided by law, in relation to the lands of the United States northwest of the river Ohio, and above the mouth of Kentucky river.

SEC. 8. *And be it further enacted*, That the location or locations of lands which Major General Lafayette is by law authorized to make on any lands, the property of the United States, in the Territory of Orleans, shall be made with the register or registers of the land offices established by this act in the said territory; the surveys thereof shall be executed under the authority of the surveyor of the lands of the United States south of Tennessee; and a patent or patents therefor shall issue, on presenting such surveys to the Secretary of the Treasury, together with a certificate of the proper register or registers, stating that the land is not rightfully claimed by any other person: *Provided*, That no location or survey made by virtue of this section, shall contain less than one thousand acres, nor include any improved lands or lots, salt spring, or lead mine.

SEC. 9. *And be it further enacted*, That a sum not exceeding fifty thousand dollars, to be paid out of any unappropriated moneys in the Treasury, be, and the same is hereby appropriated for the purpose of carrying this act into effect.

Approved, March 2, 1805.

An Act to authorize the Secretary of War to issue military land warrants; and for other purposes.

Be it enacted &c., That the Secretary of War be, and he hereby is, authorized, from and after the passing of this act, to issue warrants for military bounty lands to the sixty-three persons who have exhibited their claims, and produced satisfactory

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evidence to substantiate the same to the Secretary of War; and, also, to such persons as shall, before the first day of April next, produce to him satisfactory evidence of the validity of their claims, in pursuance of the act of the twenty-sixth of April, eighteen hundred and two, entitled "An act in addition to an act, entitled 'An act in addition to an act, regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen,'" approved the twenty-sixth day of April, eighteen hundred and two, be and the same is hereby continued in force until the first day of March, eighteen hundred and six.

SEC. 2. *And be it further enacted*, That the holders or proprietors of the land warrants issued by virtue of the preceding section, shall and may locate their respective warrants only on any unlocated parts of the fifty quarter townships, and the fractional quarter townships, which had been reserved for original holders, by virtue of the fifth section of an act, entitled "An act in addition to an act, entitled 'An act regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen,'" approved the twenty-sixth day of April, eighteen hundred and two, be and the same is hereby continued in force until the first day of March, eighteen hundred and six.

SEC. 3. *And be it further enacted*, That the act, entitled "An act in addition to an act, entitled 'An act in addition to an act regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen,'" approved the twenty-sixth day of April, eighteen hundred and two, be and the same is hereby continued in force until the first day of March, eighteen hundred and six.

Approved March 2, 1805.

An Act to amend the act, entitled "An act for the government and regulation of seamen in the merchants' service."

Be it enacted, &c., That all the provisions, regulations, and penalties, which are contained in the eighth section of the act, entitled "An act for the government and regulation of seamen in the merchants' service," so far as relates to a chest of medicines to be provided for vessels of one hundred and fifty tons burden, and upwards, shall be extended to all merchant vessels of the burden of seventy-five tons, or upwards, navigated with six persons or more, in the whole, and bound from the United States to any port or ports in the West Indies.

Approved, March 2, 1805.

An Act to authorize the erection of a bridge across a mill-pond and marsh in the Navy Yard, belonging to the United States, in the town of Brooklyn, in the State of New York.

Be it enacted, &c., That the President of the United States be, and he hereby is, authorized, by a proper instrument in writing under his hand, in due form, to grant to such person or persons, or body corporate, by their proper name or incorporation, as shall be authorized by an act of the Legislature of the State of New York, to open and improve a road from Brooklyn ferry, in that State, along the shore of the Wallabout, to Bushwick,

to erect a bridge across the mill-pond and marsh, being part of the navy yard belonging to the United States, in the said town of Brooklyn, and to maintain such bridge, under such restrictions and on such conditions as he shall prescribe: *Provided, nevertheless*, That if, at any future time, it shall appear to the President of the United States, that the property of the United States is injured by such bridge, he may revoke the permission granted by him for erecting the same.

And provided, also, That no toll shall be demanded at any time for any article the property of the United States, which may be conveyed to or for their use, over or across the said bridge, or from any person or persons employed in the said navy yard, who may pass or repass on the said bridge.

Approved, March 2, 1805.

An Act to appropriate a sum of money for the purpose of building gun-boats.

Be it enacted, &c., That the sum of sixty thousand dollars be, and the same is hereby, appropriated, to be paid out of any money in the Treasury, not otherwise appropriated, for the purpose of enabling the President to cause to be built a number of gun-boats, not exceeding twenty-five, for the better protection of the ports and harbors of the United States.

Approved, March 2, 1805.

An Act further providing for the government of the District of Louisiana.

Be it enacted, &c., That all that part of the country ceded by France to the United States, under the general name of Louisiana, which by an act of the last session of Congress was erected into a separate district, to be called the district of Louisiana, shall henceforth be known and designated by the name and title of the Territory of Louisiana, the government whereof shall be organized and administered as follows:

The Executive power shall be vested in a Governor, who shall reside in said Territory, and hold his office during the term of three years, unless sooner removed by the President of the United States: He shall be commander-in-chief of the militia of the said Territory, superintendent *ex officio* of Indian affairs, and shall appoint and commission all officers in the same, below the rank of general officers; shall have power to grant pardons for offences against the same, and reprieves for those against the United States, until the decision of the President thereon shall be known.

SEC. 2. There shall be a secretary, whose commission shall continue in force for four years, unless sooner revoked by the President of the United States, who shall reside in the said Territory, and whose duty it shall be, under the direction of the Governor, to record and preserve all the papers and proceedings of the Executive, and all the acts of the Governor and of the Legislative body, and transmit authentic copies of the same every six months, to the President of the United States.

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In case of a vacancy of the office of Governor, the government of the said Territory shall be exercised by the secretary.

SEC. 3. The Legislative power shall be vested in the Governor and in three judges, or a majority of them, who shall have power to establish inferior courts in the said Territory, and prescribe their jurisdiction and duties, and to make all laws which they may deem conducive to the good government of the inhabitants thereof: *Provided, however,* That no law shall be valid which is inconsistent with the Constitution and laws of the United States, or which shall lay any person under restraint or disability on account of his religious opinions, profession, or worship, in all of which he shall be free to maintain his own and not be burdened with those of another: *And provided, also,* That, in all criminal prosecutions, the trial shall be by a jury of twelve good and lawful men of the vicinage, and in all civil cases of the value of one hundred dollars, the trial shall be by jury, if either of the parties require it. And the Governor shall publish throughout the said Territory, all the laws which may be made as aforesaid, and shall, from time to time, report the same to the President of the United States, to be laid before Congress, which, if disapproved of by Congress, shall thenceforth cease and be of no effect.

SEC. 4. There shall be appointed three judges, who shall hold their offices for the term of four years, who, or any two of them, shall hold annually two courts within the said district, at such place as will be most convenient to the inhabitants thereof in general; shall possess the same jurisdiction which is possessed by the judges of the Indiana Territory, and shall continue in session until all the business depending before them shall be disposed of.

SEC. 5. *And be it further enacted,* That for the more convenient distribution of justice, the prevention of crimes and injuries, and execution of process, criminal and civil, the Governor shall proceed, from time to time, as circumstances may require, to lay out those parts of the Territory in which the Indian title shall have been extinguished, into districts, subject to such alterations as may be found necessary; and he shall appoint thereto such magistrates and other civil officers as he may deem necessary, whose several powers and authorities shall be regulated and defined by law.

SEC. 6. *And be it further enacted,* That the Governor, secretary, and judges, to be appointed by virtue of this act, shall respectively receive the same compensations for their services as are by law established for similar offices in the Indiana Territory, to be paid quarter-yearly out of the Treasury of the United States.

SEC. 7. *And be it further enacted,* That the Governor, secretary, judges, justices of the peace, and all other officers, civil or military, before they enter upon the duties of their respective offices, shall take an oath, or affirmation, to support the Constitution of the United States, and for the faithful discharge of the duties of their office;

the Governor before the President of the United States, or before such other person as the President of the United States shall authorize to administer the same; the secretary and judges before the Governor; and all other officers before such person as the Governor shall direct.

SEC. 8. *And be it further enacted,* That the Governor, secretary, and judges, to be appointed by virtue of this act, and all the additional officers authorized thereby, or by the act for erecting Louisiana into two Territories, and providing for the temporary government thereof, shall be appointed by the President of the United States, in the recess of the Senate, but shall be nominated at their next meeting for their advice and consent.

SEC. 9. *And be it further enacted,* That the laws and regulations, in force in the said district, at the commencement of this act, and not inconsistent with the provisions thereof, shall continue in force, until altered, modified, or repealed by the Legislature.

SEC. 10. *And be it further enacted,* That so much of an act, entitled "An act erecting Louisiana into two Territories, and providing for the temporary government thereof," as is repugnant to this act, shall, from and after the fourth day of July next, be repealed; on which said fourth day of July, this act shall commence and have full force.

Approved, March 3, 1805.

An Act to amend the Charter of Georgetown.

Be it enacted, &c., That, from and after the second Monday in March current, the Corporation of Georgetown, in the District of Columbia, shall be divided into two branches; the first branch to be composed of five members, and a recorder, and to be called "the Board of Aldermen;" and the second branch to be composed of eleven members, and to be called "the Board of Common Council men;" which said two branches shall be elected as hereafter particularly provided.

SEC. 2. *And be it further enacted,* That, after the passage of this act, and before the said day above mentioned, the present members of the said corporation shall meet at their usual place of meeting, and then and there choose, by ballot, from their body, five persons to compose the said board of aldermen, which, said persons, when chosen as aforesaid, shall compose the said board of aldermen, and be, and continue such, until the fourth Monday in February, one thousand eight hundred and six; and that the present recorder of the said corporation shall be the president of the said board of aldermen, until the time last aforesaid: that the other members of the said corporation, (except the Mayor,) shall compose the said second branch, called the board of common council men, and be and continue such, until the time aforesaid, and shall choose out of their own body, a president, to be and continue such until the time aforesaid; and when thus organized, said corporation shall have, exercise and possess, all the powers and rights now vested

in the said corporation, and to be herein and hereby vested in them.

SEC. 3. *And be it further enacted*, That the present Mayor of the Corporation of Georgetown, shall be, and continue such, until the first Monday of January next.

SEC. 4. *And be it further enacted*, That on the fourth Monday of February next, the free white male citizens of Georgetown, of full age, and having resided within the town aforesaid twelve months previously, and having paid tax to the corporation, shall assemble at a place to be appointed, as hereafter directed, and then and there shall proceed to elect, by ballot, five fit and proper persons, citizens of the United States, and residents of the said town one whole year next before the said day of election, above twenty-one years of age, and having paid a tax to said corporation, to compose the said board of aldermen; and shall also, at the same time, proceed as aforesaid, to elect eleven fit and proper persons, having the qualifications last aforesaid, to compose the said board of common council; the said board of aldermen to continue two years, and the said board of common council to continue one year: and the said mayor, together with such other fit persons as shall be named and appointed by the said corporation, shall be judges of the election, and the five persons voted for as aldermen, who shall have the greatest number of legal votes, on the final casting up of the polls, shall be declared duly elected for the board of aldermen: and the eleven persons voted for as common council, who shall have the greatest number of legal votes upon the final casting up of the polls, shall be declared duly elected for the board of common council; and that the like election for aldermen be held on the fourth Monday in February, every two years thereafter; and for the said common council, on the said fourth Monday in February, annually, forever thereafter.

SEC. 5. *And be it further enacted*, That on the first Monday of January next, and on the same day, annually, forever thereafter, the said corporation shall, by a joint ballot of the said two branches present, choose some fit and proper person to be mayor of the said corporation, and some fit and proper person, learned in the law, to be the recorder of the said corporation, to continue in office one year.

SEC. 6. *And be it further enacted*, That the said mayor, before he acts as such, and the said recorder, before he acts as such, shall, respectively, make oath, before some justice of the peace, for the county of Washington aforesaid, in the presence of both branches of the said corporation, that he will well and faithfully discharge the several and respective duties of his office; and that each member of the said two branches shall, before he acts as such, in the presence of the corporation, take an oath to discharge the duties and trust reposed in him, with integrity and fidelity.

SEC. 7. *And be it further enacted*, That four members of the board of aldermen, and seven members of the board of common council, shall form a quorum to do business; the said corpora-

tion shall hold two sessions in each year; one to commence on the first Monday in March, and the other on the first Monday in December, with power to adjourn from day to day, to be held at such place as the mayor may designate, not otherwise provided for by ordinance: *Provided, always*, That the mayor shall have power, on urgent occasions, to convene said corporation, on application of at least five members, in writing, giving reasonable notice of such intended meeting.

SEC. 8. *And be it further enacted*, That each of the said branches shall judge of the elections, qualifications, and returns of its own members, and may compel the attendance of the members of each branch by reasonable penalties: and either branch shall have power to appoint their president, *pro tempore*, in case of the absence of the one duly chosen, as aforesaid: any ordinance may originate in either branch, and no ordinance shall be passed but by a majority of both branches, nor unless it shall pass both branches, during the same session, and be approved of by the mayor, who shall sign the same, unless he objects thereto, within forty-eight hours from the time the same is presented to him for signature; if he does so object, he shall immediately return the same to the said corporation, with his objections, in writing, and if, on reconsideration, two thirds of each branch of the corporation shall be of opinion that the said law ought to be passed, it shall, notwithstanding the objections of the mayor, become a law; and he shall sign the same; if the said mayor shall not return his objections to the same, to the said corporation, within the time aforesaid, it shall become a law, and shall be signed by him: the clerk of the corporation shall record, in a book to be kept by him for that purpose, all the laws and resolutions which shall be passed as aforesaid, and deliver a copy of them to the public printer, to be printed by him for the use of the people.

SEC. 9. *And be it further enacted*, That in case the aldermen composing the first branch, shall at any time, on any question before them, be equally divided, the recorder shall have the casting vote, and determine such question to the same effect as if the same had been determined by a majority of the aldermen present; and similar power is hereby given to the president of the second branch in case of an equal division in that body.

SEC. 10. *And be it further enacted*, That it shall be the duty of the mayor to see that the laws of the corporation be duly executed, and to report the negligence or misconduct of any officer to the said corporation, who, on satisfactory proof thereof, may remove from office the said delinquent, or take such other measures thereupon as shall be just and lawful; he shall lay before the said corporation, from time to time, in writing, such alterations in the laws of the said corporation as he shall deem necessary and proper; he shall have and exercise the powers of a justice of the peace in the said town, and shall receive for his services, annually, a just and reasonable compensation, to be allowed and fixed by the said corporation. No person shall be eligible to the said office of mayor

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unless a citizen of the United States, of the age of thirty years, a resident of the said town for five years then last past, and unless he shall have paid a tax to said corporation.

SEC. 11. *And be it further enacted*, That in case of a vacancy in either branch of the said corporation, by death, removal, or otherwise, of either of the members, a fit person or persons, qualified as aforesaid, shall be elected by the people, in the manner aforesaid, to fill such vacancy immediately thereafter; the mayor giving, however, at least five days' notice of such election; and in case of the vacancy of the mayor or recorder, the said corporation shall, within five days thereafter, as hereinbefore directed, proceed to the choice of a fit person or persons, qualified as aforesaid, to fill his or their place.

SEC. 12. *And be it further enacted*, That the said corporation shall have power to impose a tax, not exceeding, in any one year, fifty cents in the hundred dollars, on all property within the said town; and the sessions of the said corporation shall be held as heretofore, until the second Monday in March, current; and the said corporation shall have, possess, and enjoy, all the rights, immunities, privileges, and powers heretofore enjoyed by them; and shall be called by the same name as heretofore, and shall have perpetual succession; and, in addition thereto, they shall have power to regulate the inspection of flour and tobacco in said town; to prevent the introduction of contagious diseases within said town and precincts; to establish night watches and patrols, and erect lamps; to regulate the stationing, anchorage, and mooring of vessels; to provide for regulating and licensing ordinaries, auctions, and retailers of liquors, hackney carriages, wagons, carts, and drays, within said town and precincts; to restrain or prohibit gambling; to provide for licensing, regulating; or restraining theatrical or other public amusements; to regulate and establish markets; to pass all laws for the regulation of weights and measures; to provide for the licensing and regulating the sweeping of chimneys, and fixing the rates thereof; to establish and regulate fire wards and fire companies; to regulate and establish the size of bricks to be made and used within said town; the inspection of salted provisions, and the assize of bread; to sink wells and erect and repair pumps in the streets; to impose and appropriate fines and penalties, and forfeitures for breach of their ordinances; to erect work-houses; to open, extend, and regulate streets within the limits of the said town; provided they make to the person or persons who may be injured by such opening, extension, or regulation, just and equitable compensation, to be ascertained by the verdict of an impartial jury, to be summoned and sworn by a justice of the peace of the county of Washington, and to be formed of twenty-three men, who shall proceed in like manner as has been usual in other cases where private property has been condemned for public use; and they shall have the power of restraining, regulating, and directing the manner of building wharves and docks; also to direct the manner in which

the improvements thereon to be erected, shall be made, so that they may not become injurious to the health of the town; in addition to the power heretofore granted to the said corporation by the act of Congress, entitled "An act additional to, and amendatory of, an act, entitled 'An act concerning the District of Columbia,'" of laying a tax of two dollars per foot front for paving the streets, lanes, and alleys of the said town; they shall have the power, upon petition, in writing, of a majority of the holders of real property fronting on any street or alley, if, in their judgment, it shall be deemed necessary, to lay such further and additional sum on each front foot, on said street, or part of a street, as will be sufficient to pave said street or part of a street, lane, or alley, so petitioned for; and the like remedy shall be used for the recovery thereof as is now used for the recovery of the public county taxes, in the said county of Washington; and they shall have power by ordinance to direct or order the paved streets to be cleansed and kept clean, and appoint an officer for that purpose; to make and keep in repair all necessary sewers and drains, and to pass regulations necessary for the preservation of the same.

SEC. 13. *And be it further enacted*, That the duties on all licenses to be granted as aforesaid, shall be to and for the proper use and benefit of the said corporation; and the said corporation shall have power to pass all laws not inconsistent with the laws of the United States, which may be necessary to give effect and operation to all the powers vested in the said corporation; and to appoint constables and collectors of the taxes, and all other officers who may be deemed necessary for the execution of their laws, whose duties and powers shall be prescribed in such manner as the said corporation shall deem fit for the purpose aforesaid.

SEC. 14. *And be it further enacted*, That the jurisdiction of the said corporation shall extend to the limits of the original plan of said town, and to such additions as are recognised by law; and that a survey, as soon as conveniently may be after the passage of this law, shall be made, under the direction of the said corporation, ascertaining said limits, and a plat thereof made and returned to said corporation, which, when approved of by them, shall be preserved, and become a record.

Approved, March 3, 1805.

An Act supplementary to the act, entitled "An act making an appropriation for carrying into effect the Convention between the United States of America and His Britannic Majesty."

Be it enacted, &c., That the Secretary of the Treasury be authorized to cause the last payment due under the convention of the eighth day of January, one thousand eight hundred and two, between the United States of America and His Britannic Majesty, to be made in Great Britain: *Provided*, That the same may be effected without any risk to the United States.

Approved, March 3, 1805.

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An Act to establish the districts of Genesee, of Buffalo Creek, and of Miami, and to alter the port of entry of the district of Erie.

Be it enacted, &c., That from and after the thirty-first day of March next, all the shores and waters of the Lake Ontario, and the rivers and waters connected therewith, lying within the jurisdiction of the United States, and within the State of New York, to the westward of the western extremity of Sodus bay, but excluding all the rivers and waters emptying into the said bay, and to the eastward of the eastern extremity of a certain creek or bay, lying between Niagara and the Genesee river, and known by the name of Oak Orchard creek, shall be a district, to be called the district of Genesee, of which the river Genesee shall be the sole port of entry; and a collector for said district shall be appointed, to reside on the river Genesee.

SEC. 2. *And be it further enacted,* That all the shores, rivers, and waters heretofore belonging to the district of Niagara, which empty into Lake Erie, or into the river Niagara, above the Falls of Niagara, shall, from and after the thirty-first day of March next, be a district; to be called the district of Buffalo creek, of which Buffalo creek shall be the sole port of entry; and a collector for the said district shall be appointed to reside on Buffalo creek.

SEC. 3. *And be it further enacted,* That, from and after the thirty-first day of March next, all the shores, rivers, and waters of Lake Erie, within the jurisdiction of the United States, which lie between the west bank of Vermillion river, and the north cape, or extremity, of Miami bay, into which the river Miami of Lake Erie empties itself, and including all the waters of the said river Miami, shall be a district, to be called the district of Miami; and the President of the United States is authorized to establish such place at or near Sandusky, or on the said river Miami, to be the port of entry, as he shall judge expedient, and also to establish not exceeding two other places, to be ports of delivery only; and a collector for the said district shall be appointed, to reside at the port of entry, and surveyors to reside at such ports of delivery as may be established, as aforesaid.

SEC. 4. *And be it further enacted,* That the President be, and he is hereby, authorized to designate such place, in the district of Erie, as he shall judge expedient, to be the port of entry of the said district.

SEC. 5. *And be it further enacted,* That the several collectors and surveyors who may be appointed by virtue of this act, or by virtue of the third section of an act passed the third of March, one thousand eight hundred and three, which authorizes the establishment of a new collection district on Lake Ontario, in addition to the fees and commissions allowed by law, respectively, receive the same annual salary, which, by law, is allowed to the collectors and surveyors of the several districts comprising the northern and western boundaries of the United States.

Approved, March 3, 1805.

An Act further to alter and establish certain post roads; and for other purposes.

Be it enacted, &c., That the following post roads be discontinued, namely:

In North Carolina—From Williesville, by Waldon's store, Speed's and Wilson's, Sterling Yancey's and Norman's store to Person Court-house; and from Wilkes to Ash Court-house.

In Virginia—From New Dublin, by Tazewell, Russell, and Lee Court-house, to Cumberland Gap.

In Maryland—From Georgetown, by Concord and Laurel to Salisbury; from Annapolis, by Kent Island and Queenstown, to Centreville.

In New Jersey—From Ringo's tavern to Flemington.

In Massachusetts—From Worcester to Lancaster; from Springfield to Northampton; and from Boston to Bridgewater.

In the Northwestern Territory—From Vincennes to Kaskaskia.

SEC. 2. *And be it further enacted,* That the following post roads be established:

In Massachusetts—From Worcester, by Holden, Rutland, Hubbardstown, Templeton, Winchendon, and Fitzwilliam, to Keene in New Hampshire; from Weymouth Landing, by Abington, East Bridgewater, and West Bridgewater to Taunton.

In New Jersey—From Cooper's Ferry, by Hadfield, Longacoming, Blue Anchor, Great Egg Harbor, River Bridge, and Somer's Point, to Absecon in Galloway township.

In Pennsylvania—From Alexandria, by Centre Furnace and Bellefont, to Williamsport; from Bristol, by Attleboro, Newtown, and Doylestown, to Quakertown; from New Hope, thro' Doylestown and Montgomery's Square, to Norristown; from Norristown, by Pawlingsford, Pughtown, Morgantown, Churchtown, and New Holland, to Lancaster; from Philadelphia, through Germantown, White Marsh, Montgomery Square, and Quakertown, to Bethlehem; from Bethlehem, by Lausanne, to Berwick; from Presqu'isle to Buffalo Creek.

In Maryland—From Annapolis, by Rock Hall, to Chestertown.

In Virginia—From Randolph Court-house to Frankfort; from Genito, by Carsell's store, to Amelia Court-house, and from thence to Perkinsonville; from Prince Edward Court-house, by Hunter's tavern, to Lynchburg; by Campbell and Pittsylvania Courthouse, to Danville; from Smithfield, by Sleepy Hole Ferry to Portsmouth; from Sleepy Hole to Suffolk.

In North Carolina—From Williamsborough, by Bullock's and Brown's stores, Sterlingville, and the Red House in Caswell county, to Caswell Court-house; from Richland, by Onslow Court-house, to Swanborough; from Raleigh, by Paul's Ferry, on Neuse, Cross-roads at Watson's, Little River, at Richardson's, Contentney, at Woodward's, Tossnot, at Dew's, to Tarborough; from Greenville Court-house, in the State of South Carolina, to Ashville in the State of North Carolina.

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In Georgia—From Darien, by Tatnall and Montgomery Court-house, to Fort Wilkinson.

From Washington in Kentucky, to Cincinnati in Ohio.

In Indiana—From Vincennes to Cahokia.

In Upper Louisiana—From St. Louis to St. Charles.

In Orleans Territory—From Natchez, in the Mississippi Territory, by Caddy's Ferry, Cahola, and Rapid settlements, to Natchitoches; from Washington city, by Athens in Georgia, to New Orleans; and from Knoxville in Tennessee to the Tombigbee settlements in the Mississippi Territory, so as to intersect the post road from Athens in Georgia to New Orleans, at the most convenient point between Athens and the said settlements.

Approved, March 3, 1805.

An Act making appropriations for carrying into effect certain Indian treaties, and for other purposes of Indian trade and intercourse.

Be it enacted, &c., That, for the purpose of defraying the expenses that may arise in carrying into effect the treaties lately made between the United States and the tribes of Indians called the Delawares, Piankeshaws, Sacs, and Foxes, the following sums, to be paid out of any moneys in the Treasury, not otherwise appropriated, be, and the same are hereby, appropriated, for the payment of the annuities stipulated in the said treaties to be paid to the said Indians, that is to say: to the Delawares, three hundred dollars, annually, for five years, and the further sum of three hundred dollars annually for ten years; to the Piankeshaws, annually, for ten years, the sum of two hundred dollars; and to the Sacs and Foxes, one thousand dollars annually, so long as the treaty with them shall continue in force.

SEC. 2. *And be it further enacted*, That, for the purpose of exploring the Indian country, and of ascertaining proper and convenient places for establishing trading-houses with the different Indian tribes within the territory of the United States, a sum of five thousand dollars be, and the same is hereby, appropriated out of any moneys in the Treasury not otherwise appropriated.

SEC. 3. *And be it further enacted*, That, for the purpose of establishing additional trading-houses with the Indian tribes, a sum not exceeding one hundred thousand dollars be, and the same is hereby, appropriated, (the balance of a former appropriation being carried to the credit of the surplus fund,) to be paid out of any moneys in the Treasury not otherwise appropriated.

Approved, March 3, 1805.

An Act to extend jurisdiction, in certain cases, to the Territorial Courts.

Be it enacted, &c., That the superior courts of the several Territories of the United States, in which a district court has not been established by law, shall, in all cases in which the United States are concerned, have and exercise within their respective Territories the same jurisdiction and powers which are by law given to, or may be ex-

ercised by, the district court of Kentucky district; and writs of error and appeals shall lie, from decisions thereon, to the supreme court, for the same causes and under the same regulations as from the said district court of Kentucky district.

Approved, March 3, 1805.

An Act to amend an act, entitled "An act for imposing more specific duties on the importation of certain articles, and also for levying and collecting light-money on foreign ships or vessels, and for other purposes."

Be it enacted, &c., That the sixth section of the act, entitled "An act for imposing more specific duties on the importation of certain articles; and also for levying and collecting light-money on foreign ships or vessels, and for other purposes," shall not be deemed to operate upon unregistered ships or vessels, owned by citizens of the United States, in those cases where such ship or vessel is in possession of a sea-letter, or other regular document issued from the custom-house of the United States, proving such ship or vessel to be American property: *Provided, however*, That upon the entry of every such ship or vessel from any foreign port or place, if the same shall be at the port or place at which the owner or any of the part owners reside, such owner or part owners shall make oath or affirmation that the sea-letter, or other regular document possessed by such ship or vessel, contains the name or names of all the persons who are then owners of the said ship or vessel; or if any part of such ship or vessel has been sold or transferred since the date of such sea-letter or document, that such is the case, and that no foreign subject or citizen hath, to the best of his knowledge and belief, any share, by way of trust, confidence, or otherwise, in such ship or vessel. And if the owner or any part owner shall not reside at the port or place at which such ship or vessel shall enter, then the master or commander shall make oath or affirmation to the like effect. And if the owner or part owner, where there is one, or the master or commander, where there is no owner, shall refuse to swear or affirm as aforesaid, such ship or vessel shall not be entitled to the privileges granted by this act.

Approved, March 3, 1805.

An Act for the more effectual preservation of peace in the ports and harbors of the United States, and in the waters under their jurisdiction.

Be it enacted, &c., That, whensoever any treason, felony, misdemeanor, breach of the peace, or of the revenue laws of the United States, shall hereafter be committed within the jurisdiction of the United States, and the case shall be cognizable by or under their authority, if the person committing the same shall be on board of any foreign armed vessel, in any port or harbor in the United States, or in the waters within their jurisdiction, it shall be the duty of any judge or justice of any court of the United States, upon satisfactory proof thereof to him made, to issue his warrant, specifying the nature of the offence, and directed to a

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marshal, commanding him to take the body of the offender, and bring him before the said judge or justice, to be dealt with according to law. And if the said marshal shall deem the ordinary *posse comitatus* insufficient to insure the execution of the said warrant, he shall apply to the said judge or justice, who shall immediately issue his order, directed to any officer having command of militia, or any officer having command of regular troops, or of armed vessels of the United States, in the vicinity, requiring him to aid the said marshal with all the force under his command, or such part as may be necessary in executing the warrant aforesaid. And the said marshal, conforming in all things to the instructions which he shall receive from the President of the United States, or from any other person authorized by the President, shall first demand the surrender of the person charged with the offence; and if delivery be not made, or if the marshal be obstructed from making the demand, he shall use all the means in his power, by force and arms, to arrest the offender, and all others who are with him, giving him aid and countenance in evading the arrest, and he shall convey the said offender, and all others arrested as aforesaid, and deliver them to the civil authority, to be dealt with according to law. If death ensue to the person ordered to be arrested, or to any of those giving him aid and countenance, it shall be justified; but if to the marshal, or to any of those supporting him in the discharge of his duty, the persons engaged in resisting the civil authority shall be punished as in cases of felonious homicide.

SEC. 2. *And be it further enacted*, That whensoever, after the passage of this act, any felony, misprision of felony, misdemeanor, or breach of the peace, shall be committed within the body of a county in any one of the United States, and any process of law shall be issued under the authority of the State, for the purpose of arresting the offender, if the offender shall be on board any foreign armed vessel, in any port or harbor of the United States, and within the jurisdiction of the State in which the offence was committed, it shall be lawful for the Governor or other supreme executive officer of the State in which the said offence shall have been committed, upon due proof thereof, and upon his being satisfied that the ordinary *posse comitatus* is insufficient to insure the execution of the said process, to issue his order, directed to any officer having command of regular troops, or armed vessels of the United States in the vicinity, requiring him to aid the officer charged with the execution of the process, with all the force under his command, or such part thereof as may be necessary in arresting the offender, and all those giving aid and countenance in resisting the civil authority. And if the said offender shall flee to any place beyond the jurisdiction of the State, and within the exclusive jurisdiction of the United States, the officer charged with the execution of the said process shall be, and he is hereby, authorized to pursue the said offender into such place, taking with him, if necessary, the said armed force, and there arrest him in virtue of the said

process. And if the said offender shall flee to, or be on board of, any foreign armed vessel, being in any place beyond the jurisdiction of the State, and within the exclusive jurisdiction of the United States, the officer charged with the execution of the said process shall first demand the delivery of the said offender of and from the person or persons having charge and command of the said foreign armed vessel, declaring the authority and cause for which the demand was made; and if the said offender be not delivered according to the said demand, or if the officer charged with the execution of the process be obstructed in attempting to make the demand, then he shall use all the means in his power, by force and arms, to enter on board the said foreign armed vessel, there to search for and arrest the said offender, and all those who are with him giving him aid and countenance, in preventing and resisting the execution of the said process; and the officer charged with the execution of the said process shall convey the said offender and deliver him over to the civil authority of the State, to be dealt with according to law; and all those arrested for being concerned in resisting the execution of the process, shall be delivered over to the civil authority of the United States, and shall be punished in the same manner as if they had been concerned in knowingly and wilfully obstructing, resisting, or opposing any officer of the United States, in serving or attempting to serve any warrant or other legal or judicial writ issued under the authority of the United States. But if any of those concerned in making the arrest be killed in a place within the exclusive jurisdiction of the United States, those engaged in resisting the civil authority shall be punished as in cases of felonious homicide; and if the person charged with the offence, or any of those concerned with him in resisting, be killed in a place under the exclusive jurisdiction of the United States, it shall be justified.

SEC. 3. *And be it further enacted*, That if any commanding officer of militia, of regular troops, or armed vessels of the United States, shall refuse to obey the requisition authorized by this act, he shall forfeit a sum not exceeding five thousand dollars.

SEC. 4. And in order to prevent insults to the authority of the laws, whereby the peace of the United States with foreign nations may be endangered, *Be it further enacted*. That it shall be lawful for the President of the United States, either to permit or interdict, at pleasure, the entrance of the harbors and waters under the jurisdiction of the United States, to all armed vessels belonging to any foreign nation, and by force to repel and move them from the same, except when they shall be forced in by distress, by the dangers of the sea, by being pursued by an enemy, or when charged with despatches or business from the Government to which they belong; in which cases, as well as in all others when they shall be permitted to enter, the commanding officer shall immediately report his vessel to the collector of the district, stating the object or causes of his

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entering the harbor or waters, shall take such position therein, as shall be assigned him by such collector, and shall conform himself, his vessel, and crew, to such regulations respecting health, repairs, supplies, stay, intercourse, and departure, as shall be signified to him by the said collector, under the authority and directions of the President of the United States, and not conforming thereto, shall be required to depart from the United States.

SEC. 5. *And be it further enacted*, That whenever any armed vessel of a foreign nation entering the harbors or waters within the jurisdiction of the United States, and required to depart therefrom, shall fail so to do, it shall be lawful for the President of the United States, or such other person as he shall have empowered for that purpose, to employ such part of the land and naval forces of the United States, or the militia thereof, as he shall deem necessary to compel the said armed vessel to depart; or if he shall think it proper, it shall be lawful for him to forbid, by proclamation, all intercourse with such vessel, and with every armed vessel of the same nation, and the officers and crew thereof; to prohibit all supplies and aid from being furnished them, and also to instruct the collector of the district, where such armed vessel shall be, and of any and of every other district of the United States, to refuse permission to any vessel belonging to the same nation, or to its citizens or subjects, to make entry or unlade, so long as the said armed vessel shall remain in the harbors or waters of the United States, in defiance of the public authority. And if, after the publication of said proclamation, and due notice thereof, any person shall afford any aid to such armed vessel, or to any other, contrary to the prohibition contained in the said proclamation, either in repairing the said vessel, or in furnishing her, her officers or crew, with supplies of any kind, or in any manner whatsoever; or if any pilot shall assist in navigating the said armed vessel, or any other, contrary to the prohibition contained in the said proclamation, unless it be for the purpose of carrying the armed vessel required to depart, as aforesaid, beyond the limits and jurisdiction of the United States, the person or persons so offending shall forfeit and pay a sum not exceeding one thousand dollars, and shall also be liable to be bound to their good behaviour.

SEC. 6. *And be it further enacted*, That whenever any officer of an armed vessel commissioned by any foreign Power, shall, on the high seas, commit any trespass or tort, or any spoliation, on board any vessel of the United States, or any unlawful interruption or vexation of trading vessels actually coming to or going from the United States, it shall be lawful for the President of the United States, on satisfactory proof of the facts, by proclamation to interdict the entrance of the said officer, and of any armed vessel by him commanded, within the limits of the United States; and if, at any time after such proclamation made, he shall be found within the limits of the United States, he shall be liable therefor to be arrested, indicted, and punished, by fine

and imprisonment, in any court in the United States having competent jurisdiction; and it shall be a part of the sentence that he shall, within such time after the payment of his fine and the expiration of his term of imprisonment, as the court shall direct, leave the United States, never to return. And if he shall return within the limits of the United States, after the passing of such sentence, or be found therein after the period limited by the court as aforesaid, he shall again be liable to be indicted, fined, and imprisoned, at the discretion of the court: *Provided always*, That, if the said officer shall also have committed any other offence made punishable by this act, he shall be liable to prosecution and punishment; the provisions of this section to the contrary notwithstanding.

SEC. 7. *And be it further enacted*, That the President of the United States shall be, and he is hereby, authorized and required to give, as soon as may be, after the passage of this act, to the collectors of the respective districts, and to such other persons as he may think proper, the necessary instructions for carrying this act into effect, particularly marking out the line of conduct to be observed by the marshal, and the several collectors, in performing the duties enjoined by this act.

SEC. 8. *And be it further enacted*, That if any person shall be sued for anything done in pursuance of, or in obedience to this act, he may plead the general issue and give this act in evidence, any law, custom, or usage, to the contrary notwithstanding.

SEC. 9. *And be it further enacted*, That this act shall continue in force for the term of two years, and from thence to the end of the next session of Congress, and no longer.

Approved, March 3, 1805.

An Act to regulate the clearance of armed merchant vessels.

Be it enacted, &c., That, after due notice of this act at the several custom houses, no vessel owned in whole, or in part, by any citizen or citizens of the United States, or by any person or persons residing within the same, or the territories thereof, and armed, or provided with the means of being armed at sea, shall receive a clearance or be permitted to leave the port where she may be so armed, or provided, for any island in the West Indies, or for any port or place situated on the continent of America, between Cayenne and the southern boundary of Louisiana, without bond with two sufficient sureties being given by the owner or owners, agent or agents, together with the master or commander, to the United States, in a sum equal to double the value of said vessel, her arms, ammunition, tackle, apparel, and furniture, conditioned that such arms and ammunition shall not be used for any unlawful purposes, but merely for resistance and defence, in case of involuntary hostility; and that the guns, arms, and ammunition of such vessel shall be returned within the United States, or otherwise accounted for, and shall not be sold or

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disposed of in any port or place in the West Indies; which bond may be sued for and recovered with costs of suit, in the name, and for the use, of the United States, in any court of competent to try the same.

SEC. 2. *And be it further enacted*, That no armed merchant vessel, or vessel prepared for armament, owned as aforesaid, shall receive a clearance, or be permitted to depart from any port in the United States, for any port or place other than those described in the first section of this act, unless the owner or owners, agent or agents, and the commander of such vessel, shall make oath that such vessel is not bound or intended to proceed to any island in the West Indies, or any port or place on the continent between Cayenne and the southern boundary of Louisiana, nor on the continent of America between Cayenne and the southern boundary of Louisiana, and also unless a bond be given by the owner or owners, agent or agents, and commander, in a sum equal to double the value of such vessel, her arms, tackle, apparel, and furniture, to the use of the United States, conditioned that such vessel shall not proceed to any island in the West Indies, or port on the continent, as aforesaid, unless compelled thereto by unavoidable accident; and if so compelled, that no part of the cargo of such vessel shall be sold, except so much thereof as may be absolutely necessary to defray the expenses necessary to enable such vessel to proceed on her intended voyage.

SEC. 3. *And be it further enacted*, That if any armed vessel, as aforesaid, shall proceed to sea without a clearance, contrary to the provision of this act, such vessel, with her arms, ammunition, tackle, apparel, and furniture, shall be forfeited to the use of the United States, and be liable to be seized, prosecuted, and condemned; or the value thereof may be sued for, and recovered with costs of suit, of the owner or owners of such vessel, in any court of competent jurisdiction; and the collector within whose district such forfeiture shall accrue, is hereby enjoined to cause prosecutions for the same to be commenced without delay, and prosecuted to effect.

SEC. 4. *And be it further enacted*, That this act shall be in force until the end of the next session of Congress, and no longer.

Approved, March 3, 1805.

An Act supplementary to the act entitled "An act making provision for the disposal of the public lands in the Indiana Territory; and for other purposes."

Be it enacted, &c., That the lands lately purchased from the Indian tribes of the Wabash, and lying between the rivers Wabash and Ohio, and the road leading from the falls of the river Ohio to Vincennes, shall be attached to, and made a part of the district of Vincennes, and be offered for sale at that place, under the same regulations, at the same price, and on the same terms, as other lands lying within the said district.

SEC. 2. *And be it further enacted*, That such and so many of the tracts of land lying north and west of the Indian boundary established by the Treaty of Grenville, which were ceded by that

treaty to the United States, as the President of the United States shall direct, shall be surveyed and subdivided in the same manner as the other public lands of the United States, and shall be offered for sale at Detroit, or at such of the other land offices established by law in the State of Ohio, or in the Indiana Territory, as the President of the United States shall judge most expedient, under the same regulations, at the same price, and on the same terms, as other lands lying within the same district.

SEC. 3. *And be it further enacted*, That so much of the tract of land lately purchased from the Indian tribes known by the name of Sacs and Foxes as the President of the United States shall think expedient and shall direct, shall be attached to and made a part of the district of Kaskaskias, and shall be offered for sale at that place, under the same regulations, at the same price, and on the same terms, as other lands lying within the said district.

SEC. 4. *And be it further enacted*, That the lands lying within the districts of Vincennes, Kaskaskias, and Detroit, which are claimed by virtue of French or British grants, legally and fully executed, or by virtue of grants issued under the authority of any former act of Congress, by either of the Governors of the Northwest or Indiana Territories, and which had already been surveyed by a person authorized to execute such surveys, shall, whenever it shall be found necessary to resurvey the same for the purpose of ascertaining the adjacent vacant lands, be surveyed at the expense of the United States, any act to the contrary notwithstanding.

SEC. 5. *And be it further enacted*, That persons claiming lands in either of the said three districts, either under legal grants derived from the French or British Governments, or by virtue of actual possession and improvement, or for any other account whatever, may, until the first day of November next, give notice, in writing, to the register of the land office of their claims, and have the evidence of the same recorded, in the manner and on payment of the fees provided by the act to which this act is a supplement; and the right of any person neglecting to give in writing notice of his claim, and to have the evidence of the same recorded, shall become void and forever be barred.

The commissioners appointed for the purpose of examining the claims of persons claiming lands in the said three districts, shall, in their respective districts, have the same powers, and perform the same duties in relation to the claims thus filed, as if notice of the same had been given before the first day of January last; and as was provided by the act to which this act is a supplement, in relation to the claims therein described. It shall be the duty likewise of the clerk of each board to prepare two transcripts of all the decisions made by the said commissioners in favor of the claimants, and to transmit one to the surveyor general and one to the Secretary of the Treasury. It shall also be the duty of the said commissioners, respectively, to make to the Secretary of the Treasury a report of all the claims filed with the register of the land

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office, which they may have rejected, together with the substance of the evidence adduced in support thereof, and such remarks thereon as they may think proper; and they shall in relation to any such rejected claims, which were founded on possession and actual settlement and improvement, particularly state the date of the improvement, and the quantity, situation and boundaries of the land claimed. Those reports, together with the transcripts of the decisions of the commissioners, in favor of claimants, shall be laid by the Secretary of the Treasury before Congress at their next session: and the lands, the claims to which shall have been affirmed by the commissioners, as well as those, the claims to which, though rejected by the commissioners, were derived from actual possession, improvement, and settlement, shall not be otherwise disposed of until the decision of Congress thereupon shall have been made. Each of the said commissioners, and each of the clerks of the respective boards, shall be allowed an additional compensation of five hundred dollars, in full for his services as such in relation to such claims; and each of the registers of the land offices, for the said three districts, shall be allowed a further sum of five hundred dollars, as a compensation in full for translating and recording, or causing to be translated and recorded, grants, deeds, or other evidences of claims in the French language.

SEC. 6. *And be it further enacted,* That the Governor of the Michigan Territory shall act as one of the superintendents of the sales of public lands at Detroit, in lieu of the Governor of the Indiana Territory.

SEC. 7. *And be it further enacted,* That all the sections heretofore reserved for the future disposition of Congress, and lying within either of the districts established for the disposal of public lands in the State of Ohio, with the exception of the section No. 16, of the salt springs, and lands reserved for the use of the same, and of the other sections or tracts of land, otherwise heretofore specially appropriated, shall be offered for sale in that district within which such reserved sections may lie, on the same terms, and on the same regulations, as other lands in the same district; *Provided,* That such sections shall previously be offered to the highest bidder at public sales, to be held under the superintendence of the register and receiver of the land offices, respectively, to which they are attached, on the same terms as have been provided for the public sales of the other lands of the United States, and on such day or days as shall, by a public proclamation of the President of the United States, be designated for that purpose: *And provided, also,* That no such heretofore reserved section shall be sold, at either public or private sale, for less than eight dollars per acre.

SEC. 8. *And be it further enacted,* That the expenses which may be incurred by virtue of this act, shall be defrayed out of the sums which have been, or may hereafter be appropriated for defraying the expenses incident to the surveying and disposal of the public lands of the United States in the Mississippi and Indiana Territories.

Approved, March 3, 1805.

An Act in addition to "An act to make provision for persons that have been disabled by known wounds received in the actual service of the United States, during the Revolutionary War."

Be it enacted, &c., That the provisions contained in the first section of "An act to make provision for persons that have been disabled by known wounds, received in the actual service of the United States, during the Revolutionary war," passed the third day of March, one thousand eight hundred and three, are hereby extended to all those persons in the service of the United States, who, in consequence of their disability by known wounds, received in actual service, during the Revolutionary war, resigned their commissions, or took discharges; or who, after incurring their disability, were taken captive by the enemy, and remained, either in captivity, or on parole, until the close of the war; or who, in consequence of known wounds received in the actual service of the United States, have, at any period since, become, and continued disabled in such manner as to render them unable to procure a subsistence by manual labor; *Provided,* That every person of the several descriptions herein mentioned, applying for a pension, shall, in all other respects, conform to the requirements of the act to which this is an addition.

Approved, March 3, 1805.

An Act to provide for the accommodation of the President of the United States.

Be it enacted, &c., That the President of the United States be, and he is hereby, authorized to cause to be sold such part of the furniture and equipage belonging to his household as may be decayed and out of repair; and that the sum of fourteen thousand dollars, together with the proceeds of such sales, be appropriated for the accommodation of the household of the President of the United States, to be laid out at his discretion, and under his direction.

Approved, March 3, 1805.

RESOLUTIONS.

Resolution expressive of the sense of Congress of the gallant conduct of Captain Stephen Decatur, the officers and crew of the United States ketch Intrepid, in attacking, in the harbor of Tripoli, and destroying a Tripolitan frigate of forty-four guns.

1. *Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled,* That the President of the United States be requested to present, in the name of Congress, to Captain Stephen Decatur, a sword, and to each of the officers and crew of the United States ketch Intrepid, two months' pay, as a testimony of the high sense entertained by Congress of the gallantry, good conduct, and services of Captain Decatur, the officers and crew of the said ketch, in attacking, in the harbor of Tripoli, and destroying a Tripolitan frigate of forty-four guns.

Approved, November 27, 1804.

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Resolutions expressive of the sense of Congress of the gallant conduct of Commodore Edward Preble, the officers, seamen, and marines of his squadron.

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, That the thanks of Congress be, and the same are hereby, presented to Commodore Edward Preble, and through him to the officers, petty officers, seamen, and marines attached to the squadron under his command, for their gallantry and good conduct, displayed in the several attacks on the town, batteries, and naval force of Tripoli, in the year one thousand eight hundred and four.

Resolved, That the President of the United States be requested to cause a gold medal to be struck, emblematical of the attacks on the town, batteries, and naval force of Tripoli, by the squadron under Commodore Preble's command, and to present it to Commodore Preble, in such manner as in his opinion will be most honorable to him: and that the President be further requested to

cause a sword to be presented to each of the commissioned officers and midshipmen who have distinguished themselves in the several attacks.

Resolved, That one month's pay be allowed, exclusively of the common allowance, to all the petty officers, seamen, and marines of the squadron, who so gloriously supported the honor of the American flag, under the orders of their gallant commander, in the several attacks.

Resolved, That the President of the United States be also requested to communicate to the parents, or other near relatives, of Captain Richard Somers, Lieutenants Henry Wadsworth, James Decatur, James R. Caldwell, and Midshipman John Sword Dorsey, the deep regret which Congress feels for the loss of those gallant men, whose names ought to live in the recollection and affection of a grateful country, and whose conduct ought to be regarded as an example to future generations.

Approved, March 3, 1805.